

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

**ORIGINAL APPLICATION NO.060/00094/2018
Chandigarh, this the 25th day of January, 2018**

**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A).**

Vijender Singh S/o Sh. Dalip Singh, Aged 45 years, R/o House No. 741, Sector-7B, Chandigarh. (Group – A).

.....Applicant

(Argued by: Mr. Sachin Chauhan, Advocate with
Mr. Pardeep Dahiya, Advocate)

VERSUS

1. Union Public Service Commission through the Secretary, Dholpur House, Shahjahan Road, New Delhi.
2. State of Haryana, through the Chief Secretary, Haryana Civil Secretariat, Sector-1, Chandigarh.
3. Union of India through the Secretary, Department of Personal and Training, North Block, New Delhi.

....RESPONDENTS

**ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The matrix of the facts and the material, culminating in the commencement of and relevant for disposal of the instant Original Application (OA), preferred by applicant Vijender Singh, and expository from the record, is that the Chief Secretary, of the State of Haryana, issued instructions dated 29.3.2017 (Annexure A-3), requesting all the Administrative Secretaries to Government Haryana, to sponsor the names of the eligible officers, to fill up one vacancy of Indian Administrative Service (IAS) from among the non-State Civil Service (SCS) Officers, serving in connection with the affairs of the State, who are of **outstanding merit** and **ability**, hold a gazetted post in a substantive

capacity, 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 their 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 persons for consideration of the Committee, and not below the age of 56 years, as on 01.01.2016, in accordance with Indian Administrative Recruitment Rules, 1954, Regulations, 1997 and instructions of DoP&T, Govt. of India. It was also, inter-alia, required from the eligible officers to send their bio data, particulars, statement of disciplinary cases/penalties, integrity certificate, indicating valid reasons, for missing ACRs, duly flagged year wise along with summary of ACRs of Non-SCS officers together with a statement giving year-wise availability of ACRs as per the prescribed format (Annexure-7).

2. As a consequences thereof, the administrative Secretaries of respective departments, sent the names of the eligible persons. In pursuance thereof, a panel of 16 officers was prepared, and was placed before the Screening Committee. The Screening Committee recommended the names of five officers, including the name of one Asha Sharma, at Sr. No. 1, and rejected the names of other eligible officers. The impugned minutes of the meeting of the Screening Committee held on 13.10.2017 are as under:-

“Minutes of meeting of the Screening Committee, held on 13.10.2017, to shortlist the names of Non-State Civil Service officers of Haryana, recommended by the Administrative Departments, to be forwarded to the Union Public Service Commission for preparing the Select List of 2016-A for appointment by selection from amongst Non-SCS to the IAS cadre of Haryana.

Present:

- (i) Shri D.S. Dhesi, IAS
Chief Secretary to Government, Haryana.
- (ii) Shri Trilok Chand Gupta, IAS,
Principal Secretary to Government, Haryana,
Monitoring & Co-ordination Department.
- (iii) Smt. Neerja Sekhar, IAS
Secretary to Government, Haryana,
Personnel Department.

The Committee met today and noted the following Regulation 4 of the IAS (Appointment by Selection) Regulations, 1997:-

“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;
- (iii) 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 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.
- (iv) below the age of 56 years as on 01.01.2016.”

2. The Committee also noted that the State Government, vide order no.66/06/2001-6S(I), dated 11.03.2011, has declared all Group-A posts (previously Class-I posts) in all the departments under the Government of Haryana equivalent to the post of Deputy Collector in the State Civil Services for the limited purposes as specified in the Regulation ibid. However, these shall exclude officers from:-

- (i) State Police Service.
- (ii) State Forests Service.
- (iv) Haryana Civil Service (Judicial Branch), and All Boards / Corporations and other autonomous bodies which are not covered in the definition of Government Departments.

3. The Committee further noted that on the proposal of the State Government, the Government of India vide its letter no.14015/7/2017-AIS(I), dated 08.02.2017 has determined one vacancy during the year 2016 for the Select List of 2016-A (Vacancies arisen between 01.01.2016-31.12.2016) for recruitment by selection to the Haryana Cadre of IAS from amongst Non-State Civil Service officers of Haryana. Accordingly, the State Government, vide letter dated 29.03.2017, requested all the Administrative Secretaries to Government, Haryana to recommend the names of eligible officers strictly in accordance with the State Government’s order No.66/6/2001-6S(I), dated 11.03.2011.

4. The Committee further observed that the following 16 candidates fulfil all the eligibility conditions:-

1. Smt. Asha Sharma
2. Sh. B.S. Sehrawat
3. Smt. Gurmeet Kaur
4. Sh. Jagjit Singh
5. Smt. Kiranmayee
6. Sh. Lajpat Rai
7. Sh. Parveen Sethi
8. Sh. Prem Singh
9. Sh. Raj Bahadur Singh Tewatia
10. Sh. Rakesh Talwar
11. Sh. Rameshwar Mehra
12. Sh. Sudhir Singh Chauhan
13. Sh. Surender Singh Dahiya
14. Sh. Vijender Singh
15. Sh. Vineet Kumar
16. Sh. Wazir Singh

5. The Committee, with a view to shortlist the candidates, decided to consider the Annual Confidential Reports of the above mentioned officers for the five preceding years and after considering the same, the Committee recommends that a panel of following officers, in alphabetic order, may be sent to the Union Public Service Commission for preparing the Select List of 2016-A:-

1. Smt. Asha Sharma
2. Sh. Lajpat Rai
3. Sh. Parveen Sethi
4. Sh. Rakesh Talwar
5. Sh. Vijender Singh

3. Meanwhile, claiming himself to be more meritorious and deeply aggrieved by the recommendations of the Screening Committee, one

Surender Singh Dahiya, Additional Director, Government of Haryana, has preferred **OA No.060/01431/2017**, challenging therein the validity and legality of the proceedings of the Screening Committee, in which interim relief was granted and confirmed, vide order dated 20.12.2017 (Annexure A-10), by this Tribunal. The present applicant Vijender Singh S/o Dalip Singh and one Parveen Sethi moved separate applications for impleading them as parties in that OA, which are still pending.

4. However, in the wake of Civil Writ Petitions **No.29843 of 2017** titled **Vijender Singh Vs. Surinder Singh Dahiya & Others** and 29902 of 2017 titled **Parveen Sethi Vs. State of Haryana & Others**, matter was remitted back, to this Tribunal, for a decision on the entire lis, by hearing all the affected parties, vide orders dated January 11, 2018, by Hon'ble High Court.

5. During the pendency of the indicated litigation the Union Public Service Commission (UPSC), respondent No.1, in exercise of its statutory powers under regulation 5 © of the Indian Administrative Service (Appointment by Selection) Regulations, 1997 (for brevity "Regulations, 1997"), declared that it was not practicable to hold the meeting of the selection committee before 31.12.2017, for selection of non-State Civil Service (SCS) Officers, for appointment to IAS of Haryana cadre, vide impugned order dated 5.1.2018 (Annexure A-1).

6. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned order, Annexure A-1, mainly on the following grounds:-

- (i) That the impugned action is totally illegal, arbitrary, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India.
- (ii) That the action of the respondent No.1 is totally illegal and arbitrary for invoking Regulation 5 © of the IAS (Appointment by Selection) Regulation, 1997 in respect of promotion of Non-SCS officers to IAS of Haryana Cadre for the Select List of 2016. The respondent No.1 exceeded its jurisdiction in issuing the letter dated 5.1.2018 as there was neither any proposal made by the Central Government or the State Government nor they could on their own arrive at a conclusion that it is not practicable to hold a meeting of the Committee during the year for no justifiable and good reasons.
- (iii) That the action of the respondent No.1 is totally illegal and arbitrary in as much as there were no good and justifiable reason for respondent No.1 to invoke Regulation 5 © of the IAS (Appointment by Selection) Regulation, 1997 as the meeting was scheduled for 22.12.2017 and the same could not be conducted due to the order-dated 20.12.2017 passed by this Hon'ble Tribunal. However, when the Hon'ble High Court of Punjab and Haryana at Chandigarh had seized of the mater and has passed an order dated 22.12.2017, the respondent No.1 ought to have waited for further directions of Hon'ble High Court in the matter.
- (iv) That when the lis is pending before the Hon'ble High Court as well as before this Hon'ble Tribunal in the matter, the decision of respondent No.1 to invoke Regulation 5 © of the IAS (Appointment by Selection) Regulation, 1997 is unfounded, unjustified, illegal, arbitrary and beyond its jurisdiction.
- (v) That as per Regulation 5 © of the IAS (Appointment by Selection) Regulation, 1997, there is no absolute bar that if in any circumstances, whatsoever, the meeting of the Selection Committee of the Respondent No.1 is not held during the year, then the process would lapse and Regulation 5 © would be invoked by respondent No.5. This is totally an erroneous and arbitrary interpretation of Regulation 5 © as it does not provide the same as interpreted by respondent No.1. Moreover, such an interpretation would be violative of Article 14 of the Constitution of India and will be bad in law.
- (vi) That Hon'ble High Court of Punjab and Haryana at Chandigarh allowed CWP No. 29843/2017 vide its order dated 11.1.2018 and set aside the order dated 20.12.2017 passed by this Hon'ble Tribunal and remitted back the matter to this Hon'ble Tribunal for comprehensive decision on the entire lis by hearing all the affected persons. As of now the lis is still pending and there is no bar under any law for respondent No.1 to proceed in the matter and hold the meeting of the Selection Committee and they may keep the recommendations in a sealed cover.
- (vii) That the applicant has a legal as well as fundamental right of consideration for induction to IAS as per IAS (Appointment by Selection) Regulations, 1997 and the same cannot be curtailed by invoking Regulation 5 © of the said Regulation for no justifiable and good reasons".

7. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order dated 5.1.2018 (Annexure A-1), in the manner, indicated herein above, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

8. Having heard the learned counsel for the applicant, having gone through the record with his valuable assistance and after considering the

entire matter, we are of the firm view that there is no merit and the instant OA deserves to be dismissed, for the reasons, mentioned herein below.

9. Ex-facie, the main arguments of the learned counsel for the applicant that since the matter of validity and legality of the select list, is still pending for final decision in previous O.A.No. 060/01431 of 2017, in this Tribunal, so the applicant has a legitimate right for consideration for appointment to the cadre of IAS from non-SCS quota, so the impugned order, Annexure A-1, is arbitrary and illegal, are neither tenable nor the observations of the Punjab & Haryana High Court in the case of **Karam Singh v. Central Administrative Tribunal, Chandigarh Bench, Chandigarh & Others**, 2008 (2) ILR, (Punjab & Haryana), 459, Central Administrative Tribunal, Principal Bench, New Delhi, in the case titled (1) Dr. **Ashok Kumar Sharma & Others Vs. Union of India & Others**, 2012 SCC OnLine CAT 649 & (2) Central Administrative Tribunal, Hyderabad Bench, Hyderabad in the cases of **K. Sahadeva Reddy & Another Vs. The Govt. of A.P. & Others**, 2007 SCC Online CAT 619 and (3) a bunch of cases in **Irrinki Srinagesh etc. etc. Vs. State of A.P. etc.** 2014 SCC OnLine CAT 32, are at all, applicable to the facts of the present case. Whereas, in the case of Karam Singh (supra), it was held as under :-

"The petitioner was neither called for assessment by the Selection Committee on 24th April, 2004 nor any notice was given to the petitioner. It has come on record that the recommendation and the notification of appointment of respondent No. 7 were subject to the decision of various cases pending and the original application filed by said respondent No.7. The said application has been dismissed as withdrawn. As a normal rule, interim order passed during the pendency of the lis stands merged with the final order. Therefore, the interim order of consideration of respondent No.7 by the Selection Committee without adjudication of the claim of respondent No. 7 will not be operative after the dismissal of the petition. However, it is apparent from the record and a fact which is not disputed is that the suitability of the petitioner eligible candidate in terms of the order passed by the Tribunal has not been adjudicated upon, whereas, the petitioner and respondent No. 7 have been found to be eligible for consideration by the Selection Committee for the purposes of Select List only by virtue of the impugned order passed by the Tribunal. The Commission has not permitted the State of Punjab to substitute the names of four ineligible officers with new recommendations as it was to be decided by the Tribunal. On 20th September, 2004, when respondent No. 7 withdrew his O.A., there was no adjudication of the eligibility of the said

respondent. Therefore, the recommendation of the name of respondent No. 7 without considering the claim of the petitioner is wholly unjustified and cannot be sustained in law".

10. Likewise, in the case of ***Irrinki Srinagesh*** (supra), the action of the respondents in not considering the applicants' names (in all OAs) (therein) for short listing for selection of Non-SCS officers for the year 2013 and for appointment to the IAS, under the provisions of Regulations, 1997, was held as illegal and arbitrary and the selection of the non – SCS officers for appointment to the IAS under the indicated regulations, on the basis of short listing prepared for the year 2013 was quashed and set aside. The respondents therein were directed to re-consider the names of all the applicants in all the OAs (therein) for short listing for appointment to the IAS cadre.

11. Similarly, the crux of the observations of the Principal Bench of this Tribunal in the case of **Dr. Ashok Kumar Sharma (supra)**, are to the effect that the Selection Committee is required to prepare the select list for each year of vacancy, the State Government is required to take into consideration the name of officers, already sponsored by Departmental Heads, while sending the proposal under regulation 4 of the Regulations, 1997, to the Committee constituted to recommend names of non-SCS officers for induction to IAS cadre.

12. Possibly, no one can dispute with regard to the aforesaid observations, but to our mind , same would not come to the rescue of the applicant, in the instant controversy, of challenging the impugned order, Annexure A-1, of UPSC, for the following, more than one reason.

13. At the first instance, it is not a matter of dispute that the validity and legality of the select list dated 13.10.2016 (Annexure A-4) is already sub-judice and is still pending in O.A.No. 060/01431/2017 titled **Surender Singh Dahiya Vs. State of Haryana & Others** wherein, it was

claimed that the select committee was required to consider the names of all the eligible candidates of non-SCS cadre officers for appointment to the IAS, on merits, and not otherwise, in which the application of the applicant for impleading him as a party, is still pending. Moreover, the scope of regulation 5C of Regulations, 1997, has not, at all, been considered in the aforesaid judgments, which is subject matter of the present case.

14. Sequel, as depicted hereinabove, the applicant has challenged the validity of the impugned order dated 5.1.2018 (Annexure A-1), of the UPSC, in the present case, which in substance is as under :-

“No.06/5(1)/2017-AIS
UNION PUBLIC SERVICE COMMISSION
Dholpur House, Shahjahan Road, New Delhi-110069
Fax: 011-23386979

To,

Dated: 5th January 2018

The Secretary to the Government of India,
Department of Personnel & Training,
North Block,
New Delhi.

(Kind attention: Shri Pankaj Gangwar, Under Secretary)

Sub: Invoking Regulation 5(c) of the IAS (Appointment by Selection) Regulation, 1997 in respect of promotion of Non-SCS Officers to IAS of Haryana Cadre for the Select List of 2016.

Sir,

I am directed to refer to Department of Personnel and Training's letter No.14015/07/2017-AIS (I) dated 08.02.2017 determining 01 (one) vacancy for Selection of Non-SCS Officers of Haryana Cadre for the Select List of 2016.

2. The State Government of Haryana forwarded a proposal vide their letter No.66/2/20176 (S1) dated 06.11.2017 for holding the meeting of Selection Committee for promotion of Non-SCS Officers to IAS of Haryana Cadre for the Select List of 2016.

3. Accordingly the meeting of the Selection Committee was fixed for 22.12.2017 at 10.30 AM in the office of Commission. However, in compliance with the order dated 20.12.2017 read with the order dated 04.12.2017 passed by Hon'ble CAT, Chandigarh in OA No.060/01431/2017 in the matter of Surender Singh Dahiya Vs. State of Haryana, the Commission deferred the SCM vide Commission's letter dated 21.12.2017. The operative parts of the above mentioned orders are as under:-

Order dated 04.12.2017

“Meanwhile, the UPSC (respondent no.2) is restrained from finalizing the indicated final select list.”

Order dated 20.12.2017

“21. Therefore, it is held that the impugned order of the Screening Committee is arbitrary, illegal, against the principle of natural justice, and is violation of Article 14 and 16 of the Constitution of India, and is in-operative. Indeed, such impugned order cannot, possible, (legally) be acted upon and sustained, in the obtaining circumstances of the case. However, it is made clear that the Screening Committee would be at liberty to prepare a fresh panel of the eligible candidates, by passing a speaking and reasoned order, forthwith in view of the aforementioned observations and in accordance with law.”

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23. Having deeply considered the matter, in the light of the aforesaid prismatic reasons, and without commenting further anything on merit, lest it may prejudice the case of either side, during the course of the hearing of the main OA, as no grounds must less cogent, to vacant the interim stay are made out, so that interim relief, already granted, in favour of the applicant, is hereby confirmed, in the obtaining circumstances of the case.”

4. Commission is also in receipt of two Interim Orders dated 22.12.2017 passed by Hon'ble High Court of Punjab and Chandigarh at Chandigarh in CWP No.29843/2017 filed by Shri Vijender

Singh Vs. Surender Singh Dahiya and Ors. and CWP No.29902/2017 filed by Shri Parveen Seth Vs. State of Haryana and Ors. In both the interim orders the operative part insofar as Commission is concerned is as under:-

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To come up on 11.01.2018 for arguments.

Any decision taken by respondent no.3/Union Public Service Commission, shall be subject to further orders to be passed by this Court."

XXXX XXXX XXXX

5. As per the provision of the IAS (Appointment by Selection) Regulation, 1997 the meeting the Selection Committee for a particular year is required to be held within 31st day of December of that year. However, in view of the Circumstances mentioned above the SCM could not be held by 31.12.2017.

6. Therefore, in exercise of their powers conferred by clause 'C' of Regulation 5 of the said Regulation, the Commission declare that it was not practicable to hold the meeting of the Selection Committee during the year 2017 for Selection of non-SCS Officers for appointment to the IAS of Haryana Cadre.

7. However, this is subject to the further orders to be passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No.29843/2017 filed by Shri Vijender Singh Vs. Surender Singh Dahiya and Ors. and CWP No.29902/2017 filed by Shri Parveen Sethi Vs. State of Haryana and Ors. and Hon'ble CAT, Chandigarh Bench in OA No.60/1431/2017 filed by Surender Singh Dahiya Vs. Chief Secretary, Government of Haryana & Ors.

Yours faithfully,

(Shankar Lal)
Under Secretary

Copy to: The Chief Secretary, Government of Haryana, Chandigarh, (kind attention Smt. Neerja Sekhar, IAS, Secretary, Personnel Department), Chandigarh.

(Shankar Lal)
Under Secretary"

15. Thus, it would be seen that the facts of the case are neither intricate, nor much disputed, and fall within a very narrow compass, to decide the real controversy between the parties, involved in the present case.

16. Such thus being the position on record, now the short and significant question, that arises for our consideration, in this case is, as to whether the respondent UPSC has power / jurisdiction to pass the impugned order dated 5.1.2018 (Annexure A-1), in the given peculiar facts and special circumstances of the case or not?

17. Having regard to the main contentions of the learned counsel for the applicant, to our mind, the answer must obviously be in the affirmative, in this regard.

18. What cannot possibly be disputed here is, that in exercise of exercise of the powers conferred by section 3 of the All India Services Act, 1951, in pursuance of sub-rule (2) of rule 8 of the Indian Administrative

Service (Recruitment) Rules, 1954 and in supersession of the Indian Administrative Service (Appointment by Selection) Regulations, 1956, the Central Government in consultation with State Governments and the Union Public Service Commission, made the Indian Administrative Service (Appointment by Selection) Regulations, 1997, which also regulates the matter of promotion of the non-SCS officers to the IAS cadre. The regulation 3 postulates that the Central Government shall, in consultation with the State Government concerned, determine the number of vacancies for which recruitment may be made under these regulations each year. The number of vacancies shall not exceed the number of substantive vacancies, as on the first day of January of the year, in which the meeting of the Committee to make the selection is held. According to regulation 4, 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, is of outstanding merit and ability, holds a Gazetted post in a substantive capacity, 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.

19. Likewise, regulation 5 posits that the Committee, as constituted under regulation 3 of the IAS (Appointment by Promotion) Regulation, 1955, 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.

20. Not only that, mandatory proviso to Regulation 5 © further envisages that ***no meeting of the Committee shall be held and no list for the year in question shall be prepared, when “the Commission, either on its own or on a proposal made by the Central Government or the State Government, considers that it is not practicable to hold a meeting of the Committee during the year, in the facts and circumstances of each case”.***

21. Therefore, a cogent and meaningful reading of these statutory regulations, would reveal that for any reason, whatsoever, no meeting of the committee ***shall*** (emphasis supplied) be held, when the Commission, either on its own motion or on a proposal made by Central Government or State Government, considering that it is not practicable to hold meeting of the committee, during the year, in the facts and circumstances of each case. Meaning thereby, there is a statutory mandate and clear bar, that UPSC ***shall*** not hold any such meeting, if the entire process of promotions is not completed by the end of that particular year, for any reasons, whatsoever. Hence, it is held that the UPSC has rightly exercised its statutory bar/power, in this relevant connection.

22. Sequelly, the next cosmetic contention of learned counsel for the applicant that the UPSC should complete the selection process, in the next year, irrespective of Regulation 5© and the pendency of the above mentioned litigation, cannot possibly be accepted, as well. In case, this feeble argument of the learned counsel for the applicant is accepted, in that eventuality, it will amount to nullifying the relevant statutory regulation 5©, which is not, at all, legally permissible. Moreover, now it

is well settled principle of law, that the Courts have no jurisdiction, at all, to issue any such directions to the UPSC, which are totally contrary to the statutory provisions.

23. Therefore, it is held that since there is a statutory bar, to hold the meeting, if the proceedings of the selection committee, are not going to be completed in that very year, for any reason, whatsoever, so the UPSC has rightly passed the impugned order, Annexure A-1, in the wake of power contained under section 5 © of the Regulations, 1997. The learned counsel for the applicant has miserably failed either to point out any manifest irregularity, illegality in the impugned order or produce any precedent nullifying the mandate and import of regulation 5 ©. Indeed such order, passed in exercise of the statutory powers, cannot possibly be set aside, on the wishful thinking of the applicant, that too, on speculative and un-substantiated grounds, as urged on his behalf. Thus, the contrary arguments of the learned counsel for the applicant, ***stricto sensu***, deserve to be and are hereby repelled, in the present circumstances of the case. As a consequence thereof, the validity of the impugned order, Annexure A-1, is upheld, in the obtaining circumstances of the case.

24. No other point, worth consideration, has either been urged or pressed by the learned counsel for applicant.

25. In the light of the aforesaid prismatic reasons, as there is no merit, the instant OA is hereby dismissed, as such, with no order as to costs.

**(P. GOPINATH)
MEMBER (A)**

**(JUSTICE M.S. SULLAR)
MEMBER (J)
25.01.2018**

HC*