

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

M.A.No.060/01908/2018 Orders pronounced on:19.02.2019
 In C.P.No.060/00007/2018 in (Orders reserved on: 04.02.2019)
 O.A.NO.060/01124/2017

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MS. P. GOPINATH, MEMBER (A)

Partap Singh Birthal
 son of Shri Ram Chand,
 resident of H. No. 282,
 Sector 26, Panchkula.

Petitioner

(BY : MR. ARJUN PARTAP ATMA RAM, ADVOCATE).

Versus

1. Mr. T. Jacob, Secretary,
 Union Public Service Commission,
 Union Public Service Commission Building,
 Shah Jahan Road, New Delhi.

(BY : MR. B.B. SHARMA, ADVOCATE)

2. Shri S.N. Roy,
 Principal Secretary to Government of Haryana,
 Department of Forest and Wild Life,
 Haryana New Secretariat,
 Sector 17,
 Chandigarh.

**(BY: MR. LOKESH SINHAL, AAG WITH
 MR. SAMARVEER SINGH, DAG).**

Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The petitioner has approached this Tribunal through the present Miscellaneous Application (MA), with a prayer, inter-alia, to revive the Contempt Petition (CP) No.060/0007/2018, which was closed on 13.8.2018 with liberty to get it revived if need arises, as according to him, the respondents have not honoured the directions of this Tribunal, in true letter and spirit.

2. The record of the case suggests that the petitioner had initially filed an O.A.No.1124-CH-2017 in this Tribunal and at motion hearing on 20.09.2017, the plea taken by counsel representing him was that the Government of Haryana, has already forwarded the names including his name, vide letters dated 09.11.2016 (Annexure A-15) and 19.01.2017 (Annexure A-16) for induction into Indian Forest Service (IFS) Cadre, but no decision had been taken by the Union Public Service Commission (UPSC). Taking cognizance of the plea, a coordinate Division Bench, without expressing any opinion on merits of the case, disposed of the OA, vide order dated 20.9.2017, with the direction to the UPSC (respondent no.2), to consider and decide the matter, within a period of two months from the date of receipt of certified copy of the order.

3. Thereafter, finding that the respondents had not taken action on his claim, the petitioner approached this Tribunal by filing C.P.No.7/2018 for non-compliance of the order dated 20.9.2017, on the allegations that despite his case having been recommended for consideration firstly against select list of 2008 and then 2009 onwards, but the same was not considered by the

relevant authority. When case came up for hearing on 12.7.2018, learned counsel for Respondent No.2 sought time to inform the Court as to why they had not forwarded recommendations to the UPSC. Ultimately, the matter came up for hearing on 13.8.2018, when learned counsel for the State of Haryana reiterated that they had already forwarded the recommendation qua the petitioner vide letters dated 9.11.2016 (Annexure A-2) and 19.1.2017 (Annexure A-3), which was returned by UPSC with some objections, thus, former was not at fault, thus C.P. was not maintainable. On the other hand, learned counsel for petitioner submitted that since respondent State of Haryana had withdrawn the recommendations, vide letters dated 14.3.2018 and as such C.P. was maintainable. However, learned counsel for respondent State of Haryana stated that the earlier recommendations made vide pointed letters would be reiterated for reconvening the review DPC. Thus, direction was issued to UPSC to convene a meeting of the review DPC as per the directions of the court of law and needful was to be done by the State within four weeks and subsequent matter was to be decided by UPSC within one month thereafter. Accordingly, C.P. was closed at that stage, but with liberty to the petitioner to get it revived, if need so arises.

4. In exercise of aforesaid liberty, the petitioner now claims that since no proposal has been sent and no review meeting has been conducted by UPSC as per his knowledge and as such C.P. may be revived.

5. Respondent No.2 has filed an affidavit dated 15.1.2019 indicating that in compliance to the aforesaid directions, Government vide letter No. PS/Secy. Ft.2018/Spl. Dated

22.10.2018 (Annexure R-1) had submitted the proposal to UPSC as per seniority list of HFS officers dated 3.2.2017 i.e seniority list in vogue (Annexure R-2) for reconvening Selection Committee Meeting ("SCM" for short) for the year 2008, 2009 and for convening SCM for the years 2012, 2013 and 2015. The name of the petitioner has been sent in proposal for Select list of 2009 and 2012 and UPSC had convened SCM on 31.12.2018 and deponent has also tendered unconditional and unqualified apology in causing delay in sending the indicated proposal. Again, an affidavit was filed on 29.1.2019 explaining that vide letter No.5222-Ft-2-2016/21349 dated 9.11.2016, the State of Haryana, stated about eligible officers for the select list of 2008 and 2009 as under :-

Select List of 2008	Select List of 2009
1.O.P. Sharma	1.Gurmeet Singh
2.Gurmeet Singh	2.Satyavir Singh Sheoran
3.Ram Karan Sharma	3.Malkeet Singh
4.Rajesh Kumar Gulia	4.Ved Prakash
5.Satyavir Singh Sheoran	5.Surinder Singh
6.Raj Kumar Bhatia	6.Jagmohan Sharma
7.Malkiat Singh	7.Satvir Singh Dahiya
8.Ved Prakash	8.Balbir Singh Khokha
9.Surinder Singh	9.Shakti Singh
10.Jagmohan Sharma	
11.Satvir Singh Dahiya	

The Selection Committee in its meeting held on 4.5.2011, had recommended four HFS officers for promotion to IFS against four vacancies for 2008 and three officers against three vacancies for 2009 as under :-

Select List of 2008	Select List of 2009
1.O.P. Sharma	1. Malkeet Singh
2.Ram Karan Sharma	2. Ved Prakash
3.Rajesh Kumar Gulia	3. Surinder Singh
4. Raj Kumar Bhatia	

The plea of the respondents is that among recommended candidates only Ved Prakash and Surinder Singh, who are junior

to petitioner, were considered and recommended for promotion against vacancies for the year 2009. They submit that mention of select list of 2008 is only a factual statement reporting that Ved Prakash (junior to applicant) was considered in select list 2008 but was not recommended for appointment and such recommendation took place only against select list 2009. Even Malkiat Singh, senior to petitioner, was also not recommended against the select list 2008. Thus, name of petitioner was appropriately considered for the select list of 2009 only, in consonance with directions of the Hon'ble High Court to consider his claim for appointment from the day his junior had been "recommended for appointment".

6. The applicant has filed an additional affidavit. It is submitted that the case of the petitioner was to be sent for the select list 2008 as per directions of Hon'ble High Court and letter noticed therein, which has not been done and as such C.P. is required to be revived and that the respondents are trying to mislead this Tribunal.

7. We have heard the learned counsel for the parties at quite some length and examined the material on the file with their able assistance.

8. Perusal of the order disposing of the O.A. and the earlier C.P. indicates, that the only direction was to the UPSC to consider and decide the matter of promotion to the post of IFS and ultimately, the proposal has been sent and meeting has taken place on 31.12.2018, in that relevant connection. The only direction issued by this Bench of the Tribunal was to consider the case of the petitioner in terms of the directions of the court of

law vide order dated 13.8.2018. It is not in dispute that Hon'ble High Court had only directed to consider the case of the applicant for promotion from the date his junior was "recommended for appointment". It also goes without any dispute that case of the juniors to the applicant was recommended for appointment against the select list of 2009 only, even if they may have been in zone of consideration for 2008 also. Thus, considering the specific directions of Hon'ble High Court, the case of the applicant has been considered against the vacancies for 2009, as has been done in case of his named juniors. In that view of the matter, we do not find any material on record to accept the allegation of petitioner that there is any violation of directions of this Court. As to whether, the case of the petitioner is to be considered against 2008 select list also and not only against 2009 select list is an issue, which can be decided only on original side, and process of contempt proceedings cannot be used to examine the legality or otherwise of the order / letter dated 22.10.2018 (Annexure R-1), which has not even been challenged. It has indeed given a fresh cause of action to the petitioner, and if he has any grievance, he can pose a challenge to the same, only on original side, in view of law laid down in a number of cases including **J.S. PARIHAR V. GANPAT DUGGAR & ORS**, 1997 AIR (SC) 113; **DIRECTOR, ELEMENTARY EDUCATION & ORS V. PRATAP KUMAR NAYAK** 1997 75 FLR (SC) 662; **LALIT MATHUR V. L. MAHESWARA RAO**, (2000) 10 SCC 285 and **DIRECTOR OF EDUCATION, UTTARANCHAL V. VED PRAKASH JOSHI** 2005 AIR(SC) 3200.

9. In the aforesaid cases, it has authoritatively, time and again, been held by the Hon'ble Apex Court, that once there is an order passed by the Government on the basis of directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum on original side.

10. In the wake of aforesaid discussion and position under law, this M.A. turns out to be bereft of any merit and is dismissed accordingly, but with the indicated liberty. Connected M.As also stand disposed of accordingly.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place: Chandigarh.
Dated: 19.02.2019

HC*

