

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/00484/2019

Decided on : May 10, 2019

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

Virender Singh Hooda

S/o Dr. Vigyan Dhar Hooda,

aged 58 years,

R/o Flat No. C-404, Hextax Commune,

Golf Course Road,

Sector 43, Gurugram,

Haryana-122009

(Group-A).

Applicant



(BY MR. AMIT JHANJI, ADVOCATE).

Versus

1. Union of India through its Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), North Block, New Delhi-110011.

(BY MR. SANJAY GOYAL, SR.CGSC)

2. Union Public Service Commission through its Secretary, Dholpur House Shahjahan Road, new Delhi-110069.

3. State of Haryana through Chief Secretary to Government Haryana, Civil Secretariat, Chandigarh-160001.

....

Respondents

(BY : NONE).

O R D E R (ORAL)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application (O.A) under section 19 of the Administrative Tribunals Act, 1985, seeking issuance of appropriate orders or directions to the respondents to consider his case for appointment to the post of Indian Administrative Service (IAS), in pursuance of notification dated 8.5.2019 (Annexure A-8), issued by respondent No.1, along with other appointees, as per Select List for the years 2012 to 2018, being selected for the select list of 2015 and to allow him to discharge his service as Administrator, HSVP, Rohtak and Additional Director, Urban Estate Rohtak, during pendency of the O.A.
2. The facts of the case, which led to filing of the instant O.A, are that Haryana Public Service Commission (HPSC) issued notification/advertisement in 1989 for appointment to Haryana Civil Services (Executive Branch) (for short "HCS (EB)"). The final result of selection was declared on 19.6.1992. The number of vacancies for general category were 7 (Seven). However, name of applicant was at Sr. No. 9 in that category. As per Circular dated 22.3.1957 issued by Government of Composite Punjab, apart from the candidates selected against the vacancies, all notified additional vacancies, which arise within six months from the recommendation of the names, could be filled up from amongst the names recommended by the Commission. Similar, instructions were issued by Government of Haryana on 26.5.1972. Vide notification dated 24.11.1992, HPSC sought to fill up 12

more vacancies to the indicated service. Thus, according to him, in terms of aforesaid two notifications, since notification for 9 (nine) vacancies for HCS was issued within six months of declaration of result on 19.6.1992, the subsequent vacancies were to be filled up from recommendations made in June, 1992.

3. The applicant approached High Court of Punjab and Haryana with **CWP No. 2557 of 1996** claiming appointment to HCS (EB) with effect from the date when others were appointed out of March, 1991 examination. However, the petition was dismissed on 1.4.1997. The applicant with other candidates filed **SLP © No.478 of 1998 (converted to C.A.No. 2286 of 1999)**. The appeal was allowed on 13.3.1999 (Annexure A-1), directing the respondents to consider the cases of appellants (therein) for appointment to HCS (EB), but to be filled to the post ranking below to those who had been selected along with the appellants at the time of recruitment made pursuant to result declared on 19.6.1992. Pursuant thereto, the applicant joined HCS (EB) on 15.12.1999 but w.e.f. 1992 and as such he completed 20 years of service and was entitled to promotion to IAS in terms of Indian Administrative Services (Appointment by Promotion) Regulations, 1955. The applicant retired from State Services on 28.2.2019 and was re-employed as Administrator, HSVK, Rohtak and Additional Director, Urban Estate, Rohtak till 31.5.2019, or till the process of DPC for promotion to IAS from State Civil Service attains finality, whichever is earlier, vide order dated 28.2.2019 (Annexure A-10).

4. As per rule 5 of Indian Administrative Service (appointment by Promotion) Regulations, 1955, the select list of members

suitable for the promotion shall be prepared every year and if the meeting could not be held during the year, the select list shall be prepared separately for each year during which the Committee could not meet as on 31st December of each year.

5. The select list for the years 2012 to 2016 could not be prepared as seniority list dated 12.12.2006 and 16.4.2010 was challenged in Hon'ble High Court in various **CIVIL WRIT PETITIONS NO. 22211 OF 2011, CWP NO. 21564 AND CWP NO. 7791 OF 2012**, in which applicant was also arrayed as respondent and due to pendency of lis, no meeting was held. Hon'ble High Court vide decision dated 1.4.2015, allowed CWP directing the Government to redraw the seniority against which Letter Patent Appeal was filed by applicant being No. 666 of 2015 - **VIRENDER SINGH HOODA VS. KULWANT KALSAN & OTHERS**. The issue was ultimately decided vide order dated 19.12.2018 (Annexure A-4) in a bunch of LPAs of HCS (EB) selected in different batches i.e. 1992, 1997, 1999 and Special Recruitment Batch in the year 1994.

6. Respondent No.1 wrote a letter dated 19.12.2018 to Chief Secretaries of all State Governments including Respondent No.3 for preparation of select list and determination of number of vacancies in promotion quota of IAS for years 2012 to 2018 respectively and to submit proposal by 15.1.2019 so that meeting could be scheduled. Revised proposal for preparing select list for the year 2017 and 2018 was also sought from respondent no.3. The proposal was sent vide letter dated 15.1.2019 (Annexure A-6). The meeting of Selection Committee was held on 12.4.2019 wherein year wise list from 2012 to 2018 has been prepared and

recommended for appointment of the members to the post of IAS. The case of the applicant was also placed for promotion against the year 2015 and he was found suitable / eligible for promotion (Annexure A-7).

7. The grievance of the applicant, in short, is that his name stands recommended for promotion against select list for the year 2015, but the respondents while issuing notification dated 8.5.2019 relating to appointment of HCS officers to IAS, have not included his name of applicant in the list presumably because he stood superannuated on 28.2.2019.

8. The learned counsel for the applicant vehemently argued that even if a member of HCS retires from service but is considered for induction into IAS from an earlier year, then he would be entitled to appointment to the service disregarding the fact that he stands retired. He places reliance on a decision of this Tribunal in O.A. No. 180/00403/2016 titled **DR. P. SURESH BABU VS. UOI ETC.** decided on 23.5.2016 in which it was clearly held that the retirement from stat service will not preclude the department from considering State Service officers for appointment to IPS. Similar view as taken in O.A.No. 180/00121/2017 titled **A.K. JAMALUDEEN VS. UOI & OTHERS,** decided on 13.2.2017. Reliance is also placed on Hon'ble supreme Court decision dated 16.10.2014 in Writ petition © No. 844 of 2013 titled **MAHESH CHAND VS. UOI & ANOTHER**, in which it was held that "petitioner shall be deemed to have been appointed to Indian Administrative Service, cadre of Uttar Pradesh with all consequential benefits on the basis of inclusion of his name in the Select List of 2006".

9. The learned counsel argues that his claim that even a retired State Civil Service officer is entitled for appointment to IAS, in terms of aforesaid judicial pronouncements, has not even been considered by them and he would be satisfied if a direction is issued to them to take a call on his claim and take a view in the matter. He also refers to some other decisions. The Apex Court in **SYED KHALID RISWI VS. UNION OF INDIA AND OTHERS**, 1993 (Suppl) 3 SCC 575, and **UNION OF INDIA VS. MOHAN LAL KAPOOR**, 1973 (2) SCC 836, held that preparation of the select list every year is mandatory under Rule 5(1) of Regulations. Following the above declaration of law, the Hon'ble Supreme Court in **UNION OF INDIA VS. VIPIN CHANDRA HIRALAL SHAH**, (1996) 6 SCC 721, held that if for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Service Officers who were eligible and fell within the zone of consideration for selection in that year.

10. The learned counsel also places reliance on a decision of our own jurisdictional High Court in the case of **CHAMAN LAL LAKHANPAL VS. UNION PUBLIC SERVICE COMMISSION & OTHERS**, 1998(3) SLR, Page 436, in which Shri Chaman Lal Lakhanpal, a senior member of State Civil Service of Haryana, approached this Tribunal by O.A. No.717-CH-98 seeking a direction to the State Government and Union of India to convene a meeting of the Selection Committee to prepare a select list of State Civil Service Officers for promotion to IAS against the

promotion quota of the year 1994-95 and thereafter. O.A. was dismissed by this Tribunal on 9.9.1998. He filed Civil Writ Petition No. 14526 of 1998 which was allowed by a Division Bench of the Hon'ble High Court by orders dated 23.11.1998. During the pendency of the Writ Petition Shri Lakhanpal retired on 30th September, 1998. The Hon'ble High Court allowed the writ petition by making the observation that: "It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules". His claim was thus allowed and the petitioner was also granted costs of Rs. 5,000/-. He thus, argued that even a retired member of HCS, if found fit by Selection Committee for induction into IAS, can be appointed to the service.

11. Issue notice.

12. At this stage, Mr. Sanjay Goyal, Sr.CGSC present in court accepts notice on behalf of Respondent No.1. He does not oppose disposal of the O.A. in the requested manner.

13. In view of the ad-idem between the parties, this O.A. is disposed of, at admission stage itself, with direction to respondent No.1 (competent authority) to take a call and consider the claim of the applicant for induction into IAS, considering the judicial pronouncements relied upon by him, within a period of one month from the date of receipt of a copy of this order.

14. Needless to mention that the observations made herein above may not be taken as an expression of any opinion on the merits of the case. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

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

**PLACE: CHANDIGARH.
DATED: 10th MAY, 2019**

HC*