

COCP No.2323 of 2014 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**COCP No.2323 of 2014 (O&M)  
Date of decision:04.05.2015**

Shamsher Singh

...Petitioner

Versus

Sanjay Kothari and others

...Respondents

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Pawan Kumar, Senior Advocate, with  
Mr. Anshuman Mandhar, Advocate, for the petitioner.

Mr. Rajiv Atma Ram, Senior Advocate, with  
Mr. Arjun Pratap Atma Ram, Advocate, for the intervener.

Mr. J.S.Bedi, Addl. A.G., Haryana.

Mr. D.R.Sharda, Advocate,  
for respondent no.2.

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**Rakesh Kumar Jain, J.**

The petitioner has prayed for initiating contempt proceedings against the respondents for the alleged intentional disobedience of the order dated 15.01.2014 passed in CWP No.20996 of 2010.

In brief, the petitioner was serving in the Indian Army. He was invalidated out of the Army with ortho/locomotive disability attributed to the military service. He joined the Haryana Civil Services as an HCS officer in the year 1992 and has now retired. He filed CWP No.20996 of 2010, challenging the order dated 23.07.2010 rejecting his request for

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considering him for promotion on the ground of being handicapped, under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the “Act”) and also prayed that the State of Haryana may be directed to grant reservation in promotion to the physically handicapped as per policy and to recommend him for promotion from HCS (Executive) to Indian Administrative Service (IAS) for the vacancy upto 2009-2010 under the handicapped quota. The said writ petition was disposed of on 15.01.2014 with the following orders:-

“Learned Senior counsel submits that he has no grievance against the promotion of Anita Yadav, respondent No.5, as she was promoted against the post earmarked in the year 2010 as the claim of the petitioner is limited qua the posts upto the year 2009.

This prayer of counsel for the petitioner has not been opposed by counsel for the respondents.

In view of the above, the present petition is disposed of with directions to respondent Nos.1 to 4 to firstly identify the posts, which would be earmarked for the handicapped category for promotion to I.A.S. Cadre and thereafter to proceed and decide the claim of the petitioner for promotion to I.A.S. Cadre against the posts till the year 2009 within a period of two months from today.

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It may be noted here that the case has not been considered on merits at all and the order has been passed on the basis of statement made by counsel for the petitioner.”

It is clear from the aforesaid order that since the petitioner had no grievance against the promotion of respondent no.5-Anita Yadav, therefore, he limited his claim qua the posts upto the year 2009 and the direction was issued to the respondents therein to firstly identify the posts, which would be earmarked for the handicapped category for promotion to the IAS cadre and then to decide the claim of the petitioner for promotion to IAS cadre against the post till the year 2009, within a period of two months.

An application bearing CM No.10739 of 2014 for modification of the aforesaid order dated 15.01.2014 was filed, which was dismissed on 05.09.2014 with the following order:-

“In the light of para-28 of the judgment of the Supreme Court passed in **Union of India and another vs. National Federation of the Blind and others**, Civil Appeal No.9096 of 2013 arising out of SLP (Civil) No.7541 of 2009, no ground for modification of the order dated 15.01.2014 is made out.

The application stands dismissed.”

The Union of India challenged the order of the Single Judge dated 15.01.2014 by way of intra-court appeal bearing LPA No.1521 of 2014, which was also dismissed on 12.09.2014. The operative part of the

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said order reads as under:-

“We have perused the judgment of the Hon'ble Supreme Court in **National Federation of the Blind's case** (supra), particularly para 28 of the judgment, and we do not find that any such categorization was made in any part of the judgment. Therefore, in our view, the writ petition filed by respondent No.1 has rightly been allowed by the learned Single Judge with directions to the appellant and respondents No.2 to 4 to consider his case in terms of the judgment of the Hon'ble Supreme Court. If the appellant wants to seek any clarification as to whether the reservation for appointment by way of promotion to Grade A and B posts is to be made or not, it has to follow the course available in law. Thus, we do not find any ground to interfere with the order passed by the learned Single Judge.”

It is needless to mention that the order of the Single Judge was maintained by the Division Bench in which the direction was issued to the respondents to consider the case of the petitioner. This petition is, thus, filed on the ground that the respondents are willfully violating the order dated 15.01.2014.

Notice in this petition was issued on 25.08.2014 because it was submitted at that time that none of the directions issued by this Court was complied with.

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After notice, various replies have been filed by the respondents and at one stage, an application bearing CM No.21294-CII of 2014 was also filed by Ms. Anita Yadav under Order 1 Rule 8-A of the Code of Civil Procedure, 1908, to intervene in this petition.

During the course of hearing, an additional affidavit on behalf of respondent no.1 dated 21.04.2015 has been filed of which paragraph nos.4 and 5 read thus:-

“4. That after due consideration of the matter, this Department decided that in case UPSC recommends the name of Shri S.S. Dalal for induction into Haryana Cadre of IAS after convening Review Selection Committee meeting, the Government of India would be open for creation of a supernumerary post for that Select List year, which would be adjusted from the vacancies existing in the first unprepared Select List in the Promotion Quota of Haryana cadre of IAS at that point of time.

2. That the said supernumerary post, in case Shri S.S.Dalal is recommended for promotion to IAS by the UPSC, would be adjusted from the vacancies existing in the first unprepared Select List and the Select Lists already prepared till that time would not get affected. Presently, the Select Lists up-to Select List year 2010 in respect of SCS officers have already been prepared and,

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therefore, the vacancy would be adjusted in such a way that none of the officers, including the officers already appointed to IAS through Select List of 2010 (SCS), would be reverted.”

In view of the stand taken by the Union of India in paragraph nos.4 and 5, referred to above, counsel appearing on behalf of the intervener, who is pursuing CM No.21294-CII of 2014, stated that he may be allowed to withdraw the said application.

The application bearing CM No.21294-CII of 2014 is, thus, dismissed as withdrawn.

Counsel for the petitioner has vehemently argued that though the petitioner is suffering from more than 40% disability as per the disability certificate issued by the office of the Civil Surgeon, Sonapat dated 03.11.2010, the certificate given by the Board of Doctors of the Pt. B.D. Sharma Post Graduate Institute of Medical Sciences, Rohtak dated 04.04.2011 and that of the PGIMER, Chandigarh dated 26.07.2013, the respondents are not complying with the order passed by this Court in the writ petition for the purpose of promoting him to the cadre of IAS.

On the other hand, counsel for the respondents has submitted that the order under reference passed by the Single Judge dated 15.01.2014 has only two parts. The first part is with regard to identification of the posts which could be earmarked for the handicapped category for promotion to I.A.S. Cadre, which has already been complied with, and secondly to decide the claim of the petitioner for promotion to IAS cadre against the posts till

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the year 2009, which has already been decided by a speaking order dated 11.03.2015, attached as Annexure R-3/1 with the affidavit of Shri D.S.Dhesi, IAS, Chief Secretary to Government of Haryana.

It is submitted that since both the directions issued by this Court have been duly complied with, therefore, there is no cause of action available to the petitioner to pursue this contempt petition.

It is further submitted that as per order Annexure R-3/1, the State Government constituted a committee vide order No.10/05/2011-6S(I) dated 06.02.2015, comprising of three Members, Convener and a Chairman, to ascertain the eligibility of the petitioner for consideration of his claim for promotion from HCS (State Civil Services) to IAS for the Select List for the years 2001, 2002, 2004, 2007, 2008 and 2009 against the posts identified for the persons with disabilities under the Act. In the meeting of the Committee, held on 11.02.2015, the petitioner also participated and submitted the certificate dated 09.02.2015 issued by the Major, Senior Record Officer for OIC Records, Ahmednagar, but the Committee had found that there was a variation in original clinical summary of Major SV Kotwal AMC, Graded Specialist (Surgery) MH Babina dated 06.01.1980 submitted by the petitioner vide letter dated 22.01.2015 and the photocopy of the clinical summary submitted by him before the Committee. It was observed that the whole document is in typed form but “the disability forty percent attributable to military service” is handwritten and also there is a variation in the wording mentioned therein. It was also found that there is no date and stamp of the officer who has opined “disability forty percent

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attributable to military service” mentioned in both the documents. Thus, the Committee had decided to verify both the documents from the Army Authorities from where the documents were issued. The Committee again met on 02.03.2015 and considered the report received from Sh. Basant Kumar Mishra, Lt. Col. Chief Record Officer, Records The Mech Inf Regt dated 25.02.2015. The crux of the report is as under:-

| Sr. No. | PPO No and date                       | Percentage of Disability | Period     |            | Remarks |
|---------|---------------------------------------|--------------------------|------------|------------|---------|
| (a)     | D/5237/1980 dated 25 Sep 1980         | 30%'                     | 01 Jul 80' | 14 Mar 82' |         |
| (b)     | D/RA/2208/1982 dated 04 Mar 82        | 20%'                     | 15 Mar 82' | 22 Dec 83' |         |
| (c)     | D/RA/2288/1984 dated 24 Apr 1984      | 20%'                     | 23 Dec 83' | 05 Dec 85' |         |
| (d)     | D/RA/5041/1986 dated 25 Mar 1986      | 20%'                     | 06 Dec 85' | 22 Dec 95' |         |
| (e)     | D/RA/1907/1996 dated 16 Apr 1996      | 20%'                     | 23 Dec 95' | 10 Oct 00' |         |
| (f)     | D/RA/4874/2001 dated 27 Aug 2001      | 20%'                     | 11 Oct 00' | For life   |         |
| (g)     | DE/CORR/040849/2012 dated 30 Mar 2012 | 20%'                     | 01 Jul 09' | For life   |         |

After considering the report received from the Army Authorities in which the petitioner was found having 30% disability as on 31.06.1980, which has been reduced to 20% gradually on 11.10.2000 for life, the respondents did not find the petitioner to be eligible for consideration for promotion from HCS to IAS.

After hearing counsel for both the parties and examining the available record, I am of the considered opinion that the petitioner does not have any cause to pursue this case for the purpose of initiating contempt proceedings against the respondents on the ground that they have willfully

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and deliberately violated the order passed by this Court on 15.01.2014. As I have already mentioned in the earlier part of the order that there were only two directions issued by this Court, firstly to identify the post and secondly to decide the claim of the petitioner. The respondents have complied with both the directions inasmuch as the post was identified but while deciding the claim of the petitioner, it was found that he was not fulfilling the eligibility criteria as his disability was not 40% and above rather it was less than that, therefore, he was not entitled to seek the benefit of promotion under the handicapped quota.

In view of the aforesaid discussion, the present petition is hereby dismissed and the Rule is discharged.

While parting, it is needless to mention that if the petitioner still feels aggrieved against the order Annexure R-3/1, he may seek his remedy in accordance with law.

May 04, 2015  
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**(Rakesh Kumar Jain)**  
**Judge**