

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

CWP No. 10763 of 2015

Date of decision:-02.05.2016

Capt Manoj Kumar

...Petitioner

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Girish Agnihotri, Sr. Advocate with
Mr. Sunil K. Nehra, Advocate
for the petitioner(s).

Mr. Keshav Gupta, AAG, Haryana

Mr. H.N. Mehtani, Advocate
for respondent No. 2

Mr. Puneet Bali, Sr. Advocate with
Ms. Monika, Advocate for respondent No. 3, 6 to 8,
10 to 13 & 15 to 17.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest? Yes

RITU BAHRI , J.

The present petition under Articles 226/227 of the Constitution of India is for issuance of writ in the nature of mandamus directing respondent No. 1 to revise the seniority list of the petitioner in the batch of the year 1996 which was selected in the year 1999, in view of the revised merit list sent by respondent No. 2-Haryana Public

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Service Commission (herein after to be referred as 'Commission") and further prayer is for issuance of direction to the respondents not to convene the DPC for the vacancies of the year 2011-12, 2012-13, 2013-14 during the pendency of the writ petition and till the seniority of the petitioner is re-fixed.

Petitioner who belong to Ex Service Men category applied for 20 posts of Haryana Civil Services (Executive Branch) along with other candidates, which were advertised on 24.04.1996 along with other allied services and the examination of these posts was conducted in December-1997-January 1998 and the result of the post was declared in the year 1999. Petitioner joined the Haryana Civil Services (Executive Branch) on 01.06.1999. In the above said advertisement, two posts were reserved for ESM category. Vide letter dated 04.05.1999 written by the Commission to the Chief Secretary Haryana, they recommended the names of the candidates in order of merits and the name of petitioner Manoj Kumar was placed at Sr No 19 in the seniority list

Thereafter, when the petitioner came to know about his marks, he represented to respondent No. 2-Commission to correct the merit list sent by them which was followed by many letters and finally, petitioner-Manoj Kumar send a legal notice dated 12.09.2003 (P-1) to the Commission to rectify their mistake, in view of instructions dated 24.05.1974 and place the petitioner at Sr. No. 2 as he secured 71.1%

marks

Thereafter, the Commission vide letter dated 11.06.2004 (P-2) corrected the merit list of HCS (E.B) and other allied services Examination, 1996 and the topper of the batch was shown as Jitender Kumar with 77% marks and Manoj Kumar obtained second position by securing 71.1% marks and the third person in the merit list was respondent No. 3 Hema Sharma, who got 69.6% marks.

Thereafter, Chief Secy. Haryana vide letter dated 13.11.2006 (P-3) addressed to the Commission inquired from them as to why the merit list sent by them has been changed and as to why the name of petitioner-Manoj Kumar and one Shakti Singh has been shown at Sr. No. 2 and 10 respectively and Commission vide letter dated 10.08.2007 (P-4) had informed the Chief Secy Haryana that vide instructions dated 24.05.1974 (P-21), the merit list of the candidates was required to be prepared on the basis of percentage of marks obtained out of the aggregate number of marks, which was not done by the Commissioner earlier inadvertently.

Thereafter, various communication was sent between Commission and Chief Secy Haryana (P-5 to P-11) in spite of the fact that the Commission clarified that they had placed petitioners at Sr. No. 2 and 10, in view of instructions dated 24.05.1974.

Petitioner Manoj Kumar again gave a representation dated

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18.06.2010 (P-12) to Chief Secy Government of Haryana that seniority has not been re-fixed inspite of the revised list sent by the Commission and the matter is pending for the last 6 years but no action was taken by the Government.

Petitioner-Manoj Kumar then submitted an application dated 28.06.2011 (P-13) under RTI Act to the Chief Secy Government of Haryana as to why the matter is being delayed inspite of the clarification/revised merit list sent by the Commission.

Thereafter, again various communications were sent between Commission and Chief Secy Haryana (P-14 to P-19) and the Commission took their stand that earlier the petitioner was placed at Sr. No. 19 inadvertently, as the Commission had not kept in mind instructions dated 24.05.1974 (P-21) and now the new revised seniority list dated 11.06.2004 has been finalized.

Despite all this, the tentative seniority list of the H.C.S (E.B) was drawn up and circulated among the officers of Government of Haryana, vide order dated 12.08.2005 and petitioner along with Shakti Singh were again placed at Sr. No. 19 and 20 of the seniority list and they submitted their objections to the Chief Secy. who while considering the objections of the Seniority list mentioned as under:-

“A decision of final seniority of Sh. Manoj Kumar and Sh.

Shakti Singh will be taken after the receipt of

information/clarification of the Haryana Public Service Commission and till then, the seniority of Sh. Manoj Kumar and Sh. Shakti Singh will remain provisional below Sh. Sushikl Sarwan in the order of merit.”

The above said order was passed by Chief Secy, Government of Haryana on 12.12.2006 (P-20) and thereafter, petitioner represented time and again that his seniority be changed in view of the revised/seniority list sent by the Commission on 11.06.2004 but no action was taken and hence the present writ petition.

On notice a written statement was filed by respondent No. 2 stating therein that that initially the Commission vide letter dated 04.05.1999 (R-1) on the basis of marks obtained by the candidates in the written examination and viva voice, had recommended the name of the candidates in order of merit and petitioners were placed at Sr. No. 19 and 20, thereafter, on a representation made by the petitioner-Manoj Kumar, a revised merit list dated 11.06.2004 was sent by the Commission, keeping in view the instructions dated 24.05.1974 and petitioners were placed at Sr. No. 2 and 10

Further vide advertisement dated 24.04.1996, there were 03 compulsory papers i.e (i) English (ii) Hindi (iii) General Knowledge of 150 marks each and 03 optional papers of 100 marks each (total 750 marks) and 100 marks for viva voice (Grand total 850 marks). However

the candidates appearing in ESM category had to appear only in 03 compulsory papers i.e English, Hindi and General Knowledge of 150 marks each and were exempted from appearing in 03 optional papers and thus, in their case there were total marks of 550 (i.e 450 for 03 compulsory papers and 100 for viva voice).

Vide letter dated 25.03.2015 (P-19), Chief Secy to Government of Haryana in reference to letter of Commission dated 03.03.2014 (P-18) asked the Commission to provide the opportunity of hearing to the petitioners and send amended recommendations of Haryana Civil Services (Executive Branch) and other allied services 1996 to the State Government to make clear as to how the result was prepared according to the Government instructions dated 24.05.1974.

Thereafter, Commission called the petitioners for personal hearing on 04.06.2015 who pleaded their case on the basis of letter/instructions dated 24.05.1974 (P-21) for fixing of merit on the basis of percentage of marks obtained by the candidates. After hearing the petitioners and after going through the advertisement, letter/instructions dated 24.05.1974, the Commission came to the conclusion that the petitioners cannot be placed at Sr. No. 2 and 10, as they only had to appear in only 03 compulsory exams and whereas the candidates belonging to General Category had to appear in 06 exams and thus the petitioners were exempted initially, as they were under the

ESM category and the petitioners can also compete in General category but they chose not to do so and the instructions 24.05.1974 which was outcome of the reference Exam 9/68/240 dated 11.04.1974 did not support by any Constitutional Provisions/Acts or Rules thereto and further the criteria for selection to Haryana Civil Services (Executive Branch) for both the categories i.e General and Ex Servicemen was different and not on the same footing.

On notice, a written statement has been filed by respondent No. 8 and 17 stating therein that Commission has passed afresh order dated 11.06.2015 (R-8/1) and the claim of the petitioner along with Shakti Singh for fixing their seniority on the basis of percentage of marks as per letter/instructions dated 24.05.1974, has been rejected by passing speaking order and thus recommendation/proposal dated 11.06.2004 became redundant. Further petitioners were kept quite for more than 10 years, as the present writ petition was filed in the year 2015. Further in the letter dated 11.06.2004 sent by the Commission to Chief Secy Government of Haryana, no reason has been assigned by the Commission, therefore, the said letter is totally non-speaking and is liable to be set aside. Further before changing the initial merit list prepared in the year 1999, vide letter dated 11.06.2004, no opportunity of hearing was given to the effected person i.e private respondents.

Further letter/instructions dated 24.05.1974 are not Government

instructions having any statutory force of law and it pertains to selection of Haryana Civil Services (Executive Branch) and other allied services for the batch of year 1970-71 and 72-73 only.

Learned senior counsel for the petitioner argued that once vide letter dated 11.06.2004, the Commission corrected the merit list of HCS (E.B) and other allied services Examination, 1996 and Jitender Kumar with 77% marks was shown at Sr. No. 1 and Manoj Kumar with 71.1% marks was shown at Sr. No. 2 and Shakti Singh was shown at Sr No. 10, thereafter, petitioner cannot be placed again at Sr. No. 19 by the Government of Haryana vide order dated 12.12.2006 (P-20) on the vague ground that the Commission has not clarified that why they had changed the merit list.

Learned senior counsel further submits that as per the rules, seniority is to be determined from the date of appointment and the petitioner was appointed on 01.06.1999 and his name was figuring at Sr. No. 2, which is evident from the letter dated 24.04.2009 (P-10). Further it has been argued that the services of the petitioners are governed by Punjab Civil Services (Executive Branch) Rules, 1930 (herein after to be referred as 'Rules 1930") and the inter se seniority of the HCS (Executive Branch) Officers borne on the Haryana Civil Services Cadre is fixed in terms of Rule 20 of Rules 1930. Prior to amendment of these rules, vide notification dated 01.10.1992, the provisions contained in

Rule 20 reads as under:-

“The seniority of members of the service shall be determined in accordance with the rotation prescribed in Rule 17, irrespective of the fact whether or not this rotation is actually followed while making appointments:

Provided that the order of merit determined by the Selection Committee or the Public Service Commission, as the case may be in respect of persons appointed from various registers shall not be disturbed.”

Consequent to the amendment made in Rule 20(1) of the Rules *ibid* vide notification dated 01.10.1992, the said rule reads as under:-

“The seniority of members appointed to the service shall be determined from the date of their appointment:-

Provided that the order of merit determined by the Selection Committee or the Public Service Commission, as the case may be in respect of persons appointed from various registers prescribed in Rule 6 or through Special recruitment under the proviso to Rule 5 shall not be disturbed.”

Learned senior counsel argued that the above said Rule makes it ample clear that the merit determined by the Commission

cannot be disturbed by the Government while assigning seniority to a member of the Haryana Civil Services (Executive Branch).

On the other hand, learned senior counsel for the private respondents vehemently argued that the present petition is liable to be dismissed on the ground of delay in challenging the seniority, and further statutory rules cannot be overruled by the government instructions further there is estoppels to challenge the selection.

On the ground of delay, learned senior counsel for has referred to the judgment of Hon'ble the Supreme Court of India in cases of ***State of Orissa v. Arun Kumar 1976(3) SCC 579 and M.P.Palanisamy v. A. Krishnan and others, 2009 (6) SCC 428.***

With regard to acquiescence/waiver/estoppels to challenge the selection, learned senior counsel for the private respondents has referred to judgments of Hon'ble the Supreme Court in cases of ***Madras Institute of Development Studies and another vs. Sivasubramaniyan and others, 2016 (1) SCC 454, Vijendra Kumar Verma v. Public Service Commission Uttarakhand and others, 2011 (1) SCC 150, Madan Lal and others v. State of J&K and others, 1995(3) SCC 486, Dhananjay Malik and others vs. State of Uttaranchal and others, 2008(4) SCC 171 and Shakuntla Devi v. Kurukshetra University, 1996 SCC Online P&H 1744.***

With regard to statutory rules cannot be superseded by

Government instructions/order, learned senior counsel for the private respondents has referred to the judgments of Hon'ble the Supreme Court in cases of The ***Accountant General, M.P v. S.K. Dubey and another, 2013(2) AJR 380, Sant Ram Sharma v. State of Rajasthan and another, AIR 1967 SC 1910, State of Haryana v. Shamsher Jang Bahadur 1972 (2) SCC 188 and Guman Singh v. State of Rajasthan 1971 (2) SCC 452***

I have heard learned counsel for the parties at length.

The judgments cited by learned senior counsel for the private with regard to the delay will not be applicable to the facts of the present case. In ***Arun Kumar Patnaik's case (supra)***, persons were appointed on contract basis and subsequently, their services were regularised. Petitioners, thereafter, challenged the terms and conditions of their appointment letter after a period of 11 years. Their petitions were dismissed on the ground of delay.

Similarly, in ***Palanisamy case (supra)***, challenge was to the seniority given to the regular appointees through Public Service Commission. Ad hoc employee were regularized but with the condition that they will be placed before regular selected employee, as the ad hoc employee had participated in the examination for regular selection and failed. Their appeals were dismissed and it was held that the ad hoc appointees initially remained silent on this condition but challenged it

after six years and High Court had rightly rejected their writ petitions.

In the present case, petitioner had participated for 20 posts of Haryana Civil Services (Executive Branch) along with other candidates and qualified. Subsequently, he joined the Haryana Civil Services (Executive Branch) on 01.06.1999. the name of petitioner Manoj Kumar was placed at Sr No 19 in the seniority list. Thereafter, when the petitioner came to know about his marks, he represented to respondent No. 2-Commission to correct the merit list sent by them which was followed by many letters and finally, petitioner-Manoj Kumar send a legal notice dated 12.09.2003 (P-1) to the Commission to rectify their mistake, in view of instructions dated 24.05.1974 and placed the petitioner at Sr. No. 2 as he secured 71.1% marks. Thereafter, the Commission vide letter dated 11.06.2004 (P-2) corrected the merit list of HCS (E.B) and other allied services Examination, 1996 and the topper of the batch was shown as Jitender Kumar with 77% marks and Manoj Kumar obtained second position by securing 71.1% marks and the third person in the merit list was respondent No. 3 Hema Sharma, who got 69.6% marks. Thus, there was no delay on the part of the petitioner. Moreover, the Commission had rectified the mistake, as per notification dated 24.05.1974.

The judgments cited by learned senior counsel for the private respondents with regard to acquiescence/waiver/estoppel to

challenge the selection, are also not applicable to the facts of the present case. The cases referred to by the petitioner of a candidate when he consciously takes part in selection process, he subsequently cannot turn around and question very selection process.

In the present case, the petitioner is not challenging the selection process and he is only seeking implementation of instructions dated 24.05.1974 (P-21) with regard to fixing his seniority in right manner.

The question for consideration in the present case would be whether instructions dated 24.05.1974 would be applicable for making the merit list, which has been followed by the Commission till date.

Reference at this stage can be made to instructions dated 24.05.1974(P-21), which reads as under:-

“No. 3306-S-74/12440

From

*Chief Secretary
Government of Haryana*

To

*Secretary
Haryana Public Service Commission
Chandigarh*

Dated Chandigarh 24.05.1974

Sub:- Send the combined list of candidates of the Haryana Civil Services (Executive Branch) and other Allied Service of examination 1970-71

Sir,

On the above subject in reference to your letter No. exam 9/68/29 dated 11.04.1974, I have been directed to bring it to your kind notice that now onwards please prepare the combined merit list of the candidates and send to the Government at the earliest on the basis of percentage of marks obtained out of aggregate no of marks. The combined merit-list of the candidates of HCS (Executive Branch) and Allied Services Examination 1972-73 be also prepared on this basis and sent to the Government at the earliest.”

The above said instructions had been followed by the Commission till date. The above said instructions did not give any benefit to the General category candidates, reserve category candidates or ex servicemen category candidates, as in the instruction, ***direction had been given to prepare the combine merit list of the candidates and send to the Government at the earliest on the basis of percentage of marks obtained out of aggregate no of marks.***

However, in the written statement filed by respondent No. 2, it has been stated that after completing the process of selection, the Commission on the basis of combined marks obtained by the candidates in the written examination and viva voice vide its letter dated 04.05.1999 recommended the names of the candidates in order of their merit. In this letter, the name of the petitioner was at Sr. No. 19 (Ex Servicemen) and Shakti Singh was placed at Sr. No. 20 (R-1). The Commission thereafter, rectified their mistake vide order dated 11.06.2004 (P-2), in view of instruction dated 24.05.1974 (P-21), and

corrected the merit list and placed the petitioner at Sr. No. 2 and Shakti Singh at Sr. No. 10 by preparing the combined merit list of the candidates.

Vide letter dated 25.03.2015 (P-19), Chief Secy to Government of Haryana in reference to letter of Commission dated 03.03.2014 (P-18) asked the Commission to provide the opportunity of hearing to the petitioner and Shakti Singh and send amended recommendations of Haryana Civil Services (Executive Branch) and other allied services 1996 to the State Government to make clear as to how the result was prepared according to the Government instructions dated 24.05.1974 (P-21).

Thereafter, Commission called the petitioner and Shakti Singh for personal hearing on 04.06.2015 who pleaded their case on the basis of letter/instructions dated 24.05.1974 for fixing of merit on the basis of percentage of marks obtained by the candidates. After hearing the petitioners and after going through the advertisement, letter/instructions dated 24.05.1974, the Commission came to the conclusion that the petitioner cannot be placed at Sr. No. 2 and Shakti Singh at Sr. No. 10, as they only had to appear in only 03 compulsory exams and whereas the candidates belonging to General Category had to appear in 06 exams and thus the petitioners were exempted initially, as they were under the ESM category and the petitioners can also

compete in General category but they chose not to do so and the instructions 24.05.1974 which was outcome of the reference Exam 9/68/240 dated 11.04.1974 did not support by any Constitutional Provisions/Acts or Rules thereto and further the criteria for selection to Haryana Civil Services (Executive Branch) for both the categories i.e General and Ex Servicemen was different and not on the same footing.

At the same time, petitioner has filed his objection against the tentative seniority list and the Chief Secy Government of Haryana while considering the objection, observed that the final decision will be taken after receiving clarification from the Commission, vide order dated 12.12.2006 (P-20).

In a separate written statement filed by respondent No 1 on 11.08.2015, it has been stated that vide letter dated 04.05.1999 written by the Commission to the Chief Secretary Haryana, they recommended the names of the candidates in order of merits and the name of petitioner Manoj Kumar was placed at Sr No 19 in the seniority list of 20 posts of Haryana Civil Services (Executive Branch), which were advertised on 24.04.1996 along with other allied services. Out of these 20 posts, 02 were reserved for Ex Servicemen category. Petitioner was placed at Sr. No. 19 and Shakti Singh at Sr. No. 20 under the ESM category, vide order dated 17.05.1999. Thereafter, the Commission vide letter dated 11.06.2004 (P-2) corrected the merit list of HCS (E.B.)

and other allied services Examination, 1996 and the topper of the batch was shown as Jitender Kumar with 77% marks and Manoj Kumar obtained second position by securing 71.1% marks and the third person in the merit list was respondent No. 3 Hema Sharma, who got 69.6% marks. Thereafter, vide letter dated 11.06.2015 (R-1/6), the Commission conveyed its views regarding the revised merit list pertaining to the year 1996 examination. After considering the views of the Commission and the legal preposition, the views expressed by the Commission were accepted by the Government, vide letter dated 21.07.2015 (R-1/7) i.e the revised recommendations of the Commission, vide letter dated 11.06.2004 (P-2). Thereafter, vide letter dated 10.08.2015, the Government again considered the matter and kept the matter in abeyance.

In compliance of order dated 17.11.2015 passed by this Court, an affidavit dated 08.12.2015 has been filed by Mr. A.K. Singh, Secy to Government of Haryana, Personnel Department and clarified its stand with regard to recommendation of the Commission. The stand has been taken that the Commission is the sole authority competent to fix the inter-se seniority of HCS appointees as per proviso to Rule 20 of the applicable Punjab Civil Service Executive Branch Rules, 1930 (for short 'Rules 1930'), which reads as under:-

Seniority of Member of Service:- the seniority of

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members appointed to the Service shall be determined from the date of their appointment:

Provided that the order of merit determined by the Public Service Commission or the Selection Committee, as the case may be, in respect of person appointed from registers prescribed in rule 6 or through special recruitment under the proviso to Rule 5 should not be disturbed.

(2) If the name of a candidate is removed from the register of accepted candidates or the list of special recruits or the order of appointment is cancelled under the provision of Rule 19, and such candidate is subsequently appointed to the Service, his seniority shall be determined from the date of subsequent appointment.”

A plain reading the above said Rule shows that the merit determined by the Commission is not to be disturbed.

Now going again back to instructions dated 24.05.1974 (P-21) which were issued by the Chief Secretary to Government of Haryana, it states that ***combined merit list of the candidates was to be prepared, which in the present case, the Commission had done vide letter dated 11.06.2004 (P-2).***

Reference at this stage can be made to a judgment of this

Court in a case of ***Jaskaran Singh v. State of Punjab 1995(2) SCT 65*** whereby this Court has followed the judgment of Hon'ble the Supreme Court in a case of ***Indra Sawhney v. Union of India 1993(1) SCT 448***. it has been held that candidate belonging to reserve category are entitled to the seats from General Category if they get higher merit as entitling him to the seat in general category. A reserved category cannot be restricted to the reserve seats and instructions imposing such restrictions are violative of Article 14 and go against the interest of the reserved categories.

Similar view was taken by this Court in a case of ***Harpreet Kaur vs. Baba Farid University of Health Science and others, 2007 (6) SLR 2011*** and held that reserve category candidate securing higher mark than general category, he/she is entitled to be considered against general category seat.

The instructions dated 24.05.1974 (P-21) have been issued as per ratio of the judgment of ***Indra Sawhney's case (supra)*** wherein it has been held that for extending the benefit of reservation, the candidates of reserve category who are higher in merit have to be given seat in the general category and thereafter, the benefit of reservation has to be given to those candidates who are lower in merit.

In the present case, the department is bound to implement instructions dated 24.05.1974 (P-21) as per mandate of Hon'ble the

Supreme Court.

Now the question for consideration before this Court would be that when the candidates ie. Petitioner and Shakti Singh appearing in ESM category had to appear only in 03 compulsory papers i.e English, Hindi and General Knowledge of 150 marks each and were exempted from appearing in 03 optional papers, whether they have to be placed below the General category employees in the merit list?

Reference can be made to a judgment passed by this Court in a case of **Rohtak Kumar Nehra and another vs. U.O.I and others, passed in CWP No. 12505 of 2009, decided on 15.07.2010** whereby the petitioners were ex-personnel of the Indian Air Force and they were issued certificates with regard to technical qualification possessed by them. This Court disposed of the writ petition by directing respondent No. 4 to treat the petitioners as degree holders, as the diploma along with requisite technical experience possessed by the petitioners is formally treated equivalent to the 'Degree in Engineering' by the Government of India.

Reference at this stage can further be made to a case titled as ***HVPNL v. Sant Kumar and others and connected matters, passed in LPA No. 1493 of 2011 and connected matters, decided on 27.09.2011*** wherein challenge was to the judgment of this Court passed by the learned single Judge directing the Nigam to treat the

qualification of the respondents equivalent to degree in Engineering and consider them to the post of Assistant Engineer against the available vacancies. The appeals were dismissed and in para 7, it has been observed as under:-

7. A perusal of the Memo shows that Diploma in Engineering in the appropriate discipline is to be recognized equivalent to degree in Engineering, provided that after acquiring the diploma the concerned candidate is required to acquire 10 years of technical experience in the appropriate field. It has nowhere been provided that the 'Diploma in Engineering' should have been possessed by the candidate at the time of entry into the service. The same could have been acquired even during the service. It is evident from the communication received from the armed authorities that all the petitioner-respondents have been awarded diploma in different disciplines. Thereafter they have also acquired 10 years technical experience in the appropriate field. The communication so received was not challenged by the appellants either before the learned Single Judge or in these appeal. Therefore, the learned Single Judge rightly observed that the diplomas so acquired by the petitioner-respondents were to be recognized as equivalent to degree in Engineering.

making them eligible for promotion to the post of Assistant Engineer.”

This Court in a case of ***Hawa Singh and others vs. State of Haryana and others, 2010(2) SCT 824*** wherein the controversy was as to whether the “Unit Education Instructor Course” undertaken by the petitioners from the Army Educational Corps Training College and Center, Panchmarhi can be treated to be equivalent to J.B.T., so as to hold the petitioners eligible for appointment as JBT teacher in the State of Haryana. This Court while relying on Rule 6 and 6A of Ex Servicemen (Reemployment in Central Civil Services and Posts) Rules, 1930 allowed the writ petition and observed in para 30, 31 and 32 as under:-

30. It may be noticed here that subsequent developments regarding recognition of qualification of petitioners as equivalent to JBT by Barkattullah University were not brought to the notice of Hon'ble Single Judge and it was on account of this that the Hon'ble Single Judge was pleased to hold that in view of the Division Bench judgment of this court, there was no merit in the writ petition filed by the petitioners seeking equivalence to JBT course.

31. It may be noticed that Madhya Pradesh Government has recognized the course undertaken by the petitioners, to be equivalent to JBT and in pursuance thereto the Adjutant General Branch of Army had

addressed a letter to the Secretary Rajya Sainik Board, Panchkula, conveying that University of Barkatullah, Bhopal had recognized the Unit course certificate as equivalent to Junior Basic Teaching (JBT) in civil services. If this fact of recognition with Madhya Pradesh Government and University of Barkatullah, Bhopal is taken and read with the Division Bench judgment of this court in the case of Manoj Kumar and others Vs. State of Haryana and others (supra), no other conclusion than the one, that the course of the petitioners was to be treated to equivalent to JBT can be arrived at.

32. *The writ petitions filed by the petitioners, also deserves to be allowed on additional ground also that is under Rule 6-A of the ExServicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, there is provision for relaxing the standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation was not to affect the level of performance on such candidates.”*

Hon'ble the Supreme Court in a case of **Mills Douglas Michael vs. Union of India, 1996(2) SCT 607** was examining a question with regard to interpretation of the advertisement issued for recruitment to the post of Inspectors of Central Excise, Income-tax etc. in relation to the out of date by which an ex-service man who is not a graduate can be deemed to be graduate on completion of 15 years of service in the Armed Forces. The writ petition was allowed by observing

in para 10 and 11 as under:-

10. Having heard learned counsel for the parties and on examining paragraph 10 of the advertisement, the question that arises for consideration is whether the cut of date indicated in the first part of paragraph 10 would also apply to the case of an ex-serviceman who is not a graduate but is deemed to be graduate on completion of 15 years of service in the Armed Forces in accordance with Sub Rule(4) of Rule 6 of the Rules? For a better appreciation of the point in issue Sub Rule (4) of Rule 6 of the Rules and Note III and Explanation thereto is extracted hereinbelow in extenso:-

"4. For appointment to any reserved vacancy in group "C" posts, a matriculate Ex-serviceman (which term includes an ex- serviceman, who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force) who has put in not less than 15 years of service in the Armed Fores of the Union may be considered eligible for appointment to the posts for which the essential qualification prescribed is graduation"

"Note III : For any serviceman of the three Armed Fores of the Union to be treated as Ex-serviceman for the purpose of securing the benefits of reservation, he must have already acquired, at the relevant time of submitting his application, for the post/service, the status of ex- serviceman and/or is in a position to establish his acquired entitlement by documentary evidence from the competent authority that he would be released discharged from the Armed Forces within the stipulated period of one year from the closing date on completion of his assignment"

"Explanation: The persons serving in the Armed Forces of the Union who on retirement from service, would come under the category of ex-serviceman may be permitted to apply for re- employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex- serviceman but shall not be

permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union."

On a plain reading of the aforesaid advertisement makes it crystal clear that minimum qualification for the post in question is a degree of recognized University or its equivalent and those candidates who either have not appeared at the degree examination or whose result has been withheld or not declared, they must pass the degree before 1.8.92. The aforesaid cut of date has no application for acquiring deemed qualification of a graduate in case of an ex- serviceman on completion of 15 years of service in the Armed Forces. In the case of [Rekha Chaturvedi vs. University of Rajasthan & Others](#) (1993 supp.(3) Supreme Court Cases 168) this Court has held that in the absence of fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for scrutiny of the qualifications will be the last date for making the applications. In view of our conclusion that the cut of date 1.8.92 has no application to the acquisition to deemed qualification of a graduate for ex-serviceman on completion of 15 years of service in the Armed Forces, and applying the ratio in [Rekha Chaturvedi's](#) case(supra) it must be held that a candidate who is not a graduate but is an ex- serviceman must complete 15 years of service by the last date of receipt of application i.e. 7.9.92 for being eligible to be considered for the recruitment to the post of Inspectors in Central Excise and Income Tax etc. 1992. Since admittedly, the appellant in the first case completed 15

years of service by 31.8.92 he was fully eligible for being considered and, therefore, the order of cancellation of his selection is wholly illegal. Accordingly the impugned order of Tribunal at Madras Bench is set aside and O.A. No. 658 of 1994 stands allowed. The appellant Douglas Michale be allowed to join the post for which he had been issued a letter of appointment.

11. Coming to the second case we are also of the considered opinion that the Tribunal erred in law in relying upon Note III and Explanation thereto quoted earlier, to hold that the eligibility qualification under the deemed provision could be acquired within one year from the closing date on completion of assignment. Note III as well as Explanation thereto is in relation to the eligibility of a person to apply for re-employment one year before the completion of specified term of engagement. The said provision has no correlations with the deemed qualification of graduate on completion of 15 years of Defence service. The Tribunal at Ernakulam Bench, therefore, wholly erred in law in extending the period by which an ex-serviceman could complete 15 years of service and become eligible for appointment to the post of Inspector of Central Excise, Income-Tax etc. pursuant to the advertisement in question. The Tribunal at Ernakulam Bench has recorded the finding that the applicants therein who are the respondents in the second case did not complete 15 years of service as Defence personnel by the date of the submission of application but only completed the same on the date of interview i.e. in September/October 1993. But applying Note III and Explanation thereto held them to be duly qualified for

the purpose on the relevant date. In view of our earlier conclusion that the deemed qualification of being a graduate must be acquired on the last date of submission of application i.e.7.9.92 which, in other words, would mean that the concerned person must have 15 years of service in Defence by 7.9.92 for being eligible to be considered for the post and admittedly, the respondents having not completed 15 years of service by that date they were ineligible for being considered and the cancellation of their provisional appointment, therefore, was in accordance with law and the Tribunal erred in law in interpreting the provisions of the advertisement. The said appeals, therefore, are allowed and O.S. Nos. 542/94 and 622/94 filed before the Ernakulam Bench stand dismissed. All the appeals are accordingly allowed, but in the circumstances there will be no order as to costs.”

The Full Bench of this Court was considering a case of ***Jagdish Rai etc vs. State of Haryana etc, 1977 AIR (Punjab) 56*** whereby this Court upheld the reservation of posts in favour of ex-servicemen and observed that the State has an undoubted obligation to provide employment to Ex-servicemen who have faithfully served the interests of the country's security, ready to risk their lives. That State has an obligation to protect them from the competition of civilian applicants against whom they may not stand a chance for reasons already mentioned. Ex-servicemen personnel are required to possess the minimum qualifications as others and they can be endowed with the

qualities of discipline, sacrificed etc. In para 10, it has been observed as under:-

10. On the same analogy, it must be said that while the best and the most meritorious of those seeking appointment under the State should be selected, it is also equally fair and equitable that a just proportion of the posts should be given to those who, because of a peculiar handicap, may not stand a chance against those not so handicapped. It would be an extension of the principle of Article 16(4) to those that do not fall under Article 16(4). Defence Personnel who on account of their service with the Army, the Navy and the Air Force over the years have lost opportunities for entering Government Service and have also lost contact with ordinary civilian life, may find it extremely difficult, on demobilisation, to compete with civilians for civilian jobs, despite the qualities of discipline, sacrifice, sense of public duty, initiative, loyalty and leadership which they would have undoubtedly acquired as members of the Defence Forces. The State has an undoubted obligation to provide employment to Ex-Servicemen who have faithfully served the interests of the country's security, ready to risk their lives. The State has an obligation to protect them from the competition of civilian applicants against whom they may not stand a chance for reasons already mentioned. The State is, therefore, justified in classifying them separately as a source of recruitment and reserving posts for them, Nor, can it be said that efficiency of service will suffer. Ex-Service Personnel are required to possess the same minimum qualifications as others and they came endowed with qualities of discipline, sacrifice, initiative, loyalty, sense of public duty, etc., qualities not to scoffed at in public service. And, what does efficiency mean ? As Krishna Iyer, J., points out "Efficiency means, in terms of good Government, not marks in examination only, but responsible and responsive service to the people."

In ***State of Punjab v. Hira Lal***, **ARI 1971 S.C 1777**, while determining the scope of equality of opportunity clause appearing in Article 10(1), the Supreme Court observed as under:-

The mere fact that the reservation made may give extensive benefits to

some of the persons who have the benefit of the reservation does not by itself make the reservation bad. The length of the leap to be provided depends upon the gap to be covered.....It is It is true that every reservation under Article 16(4) does introduce an element of discrimination particularly when the question of promotion arises. It is an inevitable consequence of any reservation of posts that junior officers are allowed to take a march over their seniors. This circumstance is bound to displease the senior officers. It may also be that some of them will get frustrated but then the Constitution makers have thought fit in the interest's of the society as a whole that the backward class of citizens of this country should be afforded certain protection.

Further in ***D.N. Chanchala v. State of Mysore, AIR 1971***

SC 1762, the Court was concerned with the question of reservation of seats for the children of political sufferers and of members of defence services, in educational institutions. While justifying such reservations, the Court observed as under:-

"The criteria for such reservation is that those serving in the Defence forces or those who had so served are and were at a disadvantage in giving education to their children since they had to live, while discharging their duties in difficult places where normal facilities available elsewhere are and were not available. In our view it is not unreasonable to extend that principle to the children of political sufferers who in consequence of their participation in the emancipation struggle became unsettled in life; in some cases economically ruined and were therefore not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage. If that be so, it must follow that the definition of 'political sufferer' not only makes the children of such sufferers distinguishable from the rest but such a classification has a reasonable nexus with the object of the rules which can be nothing else than a fair and just distribution of seats. In our view neither of the two contentions raised by counsel for the petitioner can be accepted with the result that

the writ petition fails and is dismissed.

As per judgments of Hon'ble the Supreme Court and ***Jagdish Rai's case (supra)***, the benefit of reservation granted to the Ex-servicemen has been made on account of the fact that defence personnels had been serving in very tough conditions and are not living a normal lifestyle of a civilian and are serving in the country in extreme circumstances. After retiring from the defence services, they could not be expected to compete with the civilians for appointment on civil posts. At the same time, an opportunity was required to be given to them to work along with civilians. In this background, reservation for ex-servicemen has been justified in all spheres of civil life i.e education, appointments etc. The time spent by them in their services is not to go against them while competing with the civilians.

The petitioner had to appear only in 03 compulsory papers i.e English, Hindi and General Knowledge of 150 marks each and was exempted from appearing in 03 optional papers. This exemption had been given to ex-servicemen in view of the numerous judgments of Hon'ble the Supreme Court and was an attempt to bring them at par with the civilians for civilian posts. This exemption given to them will not make them less meritorious. The marks obtained by them in three compulsory papers would be taken into consideration for making the merit list, as per instruction dated 24.05.1974 (P-21). They cannot

be placed below the general category candidates simply on the ground that they were ex-servicemen and were not meritorious, as they were granted exemption from appearing in 3 optional papers.

Applying the ratio of the above said judgment especially the service rules which provided that for the purpose of re-employment of ex-servicemen even the diploma with 10 years has to be treated as degree in Engineering. Further the candidate who is not a graduate but if ex-servicemen if having 15 years of experience is treated to be equivalent to graduation. The ex-servicemen category candidate has to be treated at par with general category candidate keeping in view that he had served for long time in army.

In this background, in the facts of the present case, instructions dated 24.05.1974 (P-21) was rightly applied by the Commission vide letter dated 11.06.2004 (P-2) by placing the petitioner at Sr. No. 2 in the merit list and further as per Rule 20 of Rules 1930, the merit determined by the Commission cannot be disturbed by the Government while assigning seniority to a member of the Haryana Civil Services (Executive Branch). If the petitioner was exempted from appearing in 03 optional papers, it does not mean that he was less meritorious than the general category candidate. For all intents and purposes, they were equivalent with that of general category candidates and this cannot be made a ground for rejecting the claim of the

petitioner. The instructions dated 24.05.1974 (P-21) has been followed by the Commission till date. It is very strange that despite revising the merit list by the Commission on 11.06.2004 (P-2), State of Haryana unnecessarily lingered on the case only on the ground that the petitioner being Ex-servicemen has to be placed below General Category candidates, as the petitioner was exempted from appearing in 03 optional papers.

In the affidavit dated 08.12.2015 filed by Mr. A.K. Singh, Secretary to Government of Haryana, it has been stated that the Commission is the sole authority competent to fix the inter-se seniority of HCS appointees as per proviso to Rule 20 of 1930 Rules, which says that the merit determined by the Commission is not to be disturbed.

Thus, keeping in view Rule 20 of 1930 Rules and instructions dated 24.05.1974 (P-21), the Commission had rightly revised the merit list vide order dated 11.06.2004 (P-2) and this merit list was not to be disturbed. This merit list should have been accepted by the State without any delay immediately but they rejected the case of the petitioner along with Shakti Singh on the ground of delay itself. It is the State authorities who had kept the matter pending till date and the delay cannot be attributed to the petitioner, who immediately approached the Commission by giving a legal notice dated 12.09.2003 (P-1) to the Commission to rectify their mistake, in view of instructions

dated 24.05.1974 (P-21).

For the reasons aforementioned, the writ petition is allowed and direction is given to the respondents to implement the revised merit list dated 11.06.2004 (P-2), as per instructions dated 24.05.1974 (P-21) and give consequential benefits to the petitioner.

02.05.2016

G Arora

(RITU BAHRI)
JUDGE