

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

Date of decision: 18.04.2022

1. CWP No. 6584 of 2019 (O&M)

Ankur Mittal	versus	...Petitioner
State of Haryana and others		...Respondents

2. CWP No. 7651 of 2021 (O&M)

Abhishek Verma	versus	...Petitioner
State of Haryana and others		...Respondents

Coram : Hon'ble Mr. Justice Arun Monga

Present : Mr.Rajiv Atma Ram, Senior Advocate assisted by
Mr. Rajat Khanna, Advocate, for the petitioner(s).

Mr. Samarth Sagar, Additional Advocate General, Haryana.

Arun Monga, J.

Vide this common order and judgment above-mentioned two writ petitions are being disposed of, since not only the facts are similar, even the issue raised therein are common.

2. In CWP-6584-2019 : Ankur Mittal vs State of Haryana and others, issuance of a writ, order and/or direction in the nature of Certiorari is sought herein to quash the impugned order dated 29.11.2018 (Annexure P-14) vide which petitioner's application seeking job as an outstanding sportsperson under the Haryana Outstanding Sportspersons (Recruitment & Conditions of Service) Rules, 2018 was rejected. He was held ineligible under the Rules *ibid*. A mandamus is also sought commanding the respondents to consider and appoint the petitioner either in Haryana Civil Services (HCS) or Haryana Police Service (HPS), relying on the same very Rules. Consequential benefits have also been sought with effect from the date of his application seeking job i.e. 26.09.2018.

3. Likewise, in CWP-7651-2021- Abhishek Verma vs State of Haryana and others similar relief has been prayed. Application of the petitioner seeking job as an

outstanding sportsman in HCS or HPS has been rejected vide impugned order dated 21.12.2018 (Annexure P-12) stating that he is not eligible as per the applicable Rules.

FACTS

4. First the factual narrative from the earlier of the two writ petitions.

CWP-6584-2019 (O&M):Ankur Mittal vs State of Haryana and others

4.1. Petitioner is a graduate of Year 2013 from Hans Raj College, University of Delhi. At the time of filing of the writ petition, he was pursuing MBA which he later completed in the year 2020. He is an outstanding sportsperson of international prominence in the discipline of Shooting (Event : Trap Shooting) per his achievements tabulated as below:-

<i>Sr. No.</i>	<i>Competition</i>	<i>Held on</i>	<i>Event</i>	<i>Medal won</i>
1.	52 nd ISSF World Championship (Changwon, Republic of Korea)	31.08.2018 - 14.09.2018	° Double Trap Men (Individual) ° Double Trap Men (Team)	° Gold ° Bronze
2.	Haryana State Shooting Championship Competition	01.07.2018 - 05.07.2018	°Clay Pigeon Double Trap Shooting (NR) Championship Men (Ind.).	° Gold
3.	Commonwealth Games (Brisbane, Australia)	14.04.2018	° Double Trap Men (Individual)	° Bronze
4.	61 st National Shooting Championship Competition 2017	14.11.2017 - 25.11.2017	°Clay Pigeon Double Trap Shooting (ISSF) National Championship Men (Team). °Clay Pigeon Double Trap Shooting (ISSF) National Championship Men (Team). °Clay Pigeon Double Trap Shooting (ISSF) National Championship Men (Ind)	° Silver ° Silver ° Silver
5.	Commonwealth Shooting Championship (Brisbane, Australia)	28.10.2017 08.11.2017	° Double Trap Men (Individual)	° Gold
6.	7 th Asian Shotgun Championship (Astana Kazakhstan)	03.08.2017 -- 14.08.2017	°Double Trap Men (Individual) ° Double Trap Men (Team)	° Gold ° Gold

7.	Haryana State Shooting Championship Competition 2017	30.06.2017 - 04.07.2017	°Clay Pigeon Double Trap Shooting (NR) Championship Men (Ind.).	° Gold
8.	ISSF World Cup (Acapulco, Mexico) Equalized the world record of 75 targets	17.03.2017 - 27.03.2017	° Double Trap Men.	° Gold
9.	Haryana State Shooting Championship Competition 2016	28.07.2016 - 30.07.2016	°Clay Pigeon Double Trap Shooting (NR) Championship Men (Ind.).	° Silver
10.	59 th National Shooting Championship 2015 (Shotgun)	11.12.2015 -- 23.12.2015	°Clay Pigeon Double Trap Shooting (ISSF) National Championship Men (Team).	° Gold
11.	35 th National Games (Shotgun Event)	01.02.2015 08.02.2015	°Clay Pigeon Double Trap Shooting (ISSF) Men (Team). °Clay Pigeon Double Trap Shooting (ISSF) Men (Ind.)	°Gold ° Gold

4.2. Petitioner was also conferred ‘Bheem Award’ in the year 2016-17 by the State of Haryana for his sports achievements and later the highest sports award in the country i.e. ‘Arjuna Award’ in the year 2018 by the Government of India. Petitioner at one time was also world no.1 in his sports discipline as per world ranking list of 01.12.2017.

CWP-7651-2021:AbhishekVermavs State of Haryana and others

5. As regards the credential of the petitioner in the later writ petition, he too is an ‘Arjuna Award’ conferee of November, 2021 in the Shooting event. He is B.Tech in Engineering and LL.B. Notwithstanding, the application of the petitioner seeking job has been rejected vide impugned order dated 21.12.2018.

5.1. Some of the sports achievements of petitioner are tabulated as below:-

Sr.No.	Competition	Medal Won
1.	In 2020	Became Indian Rank No.1
2.	ISSF World Ranking – (1 st September, 2019 to 30 April, 2020).	World Ranking No.2
3.	From May 2019 to April 2020	World Rank: Always in Top 4
4.	Asian Championship (Once in 4 years/Olympic Qualifier), 2019	Gold Medal (Mix. Team), Bronze Medal (Team)

5.	<i>ISSF World Cup Finals 2019 Putian, China</i>	<i>Made National Record</i>
6.	<i>ISSF World Cup 2019 at Beijing, China</i>	<i>Gold Medal and won Olympic Quota</i>
7.	<i>ISSF World Cup 2019 at Rio, Brazil</i>	<i>Gold Medal (Individual) Silver Medal (Mix Team)</i>
8.	<i>2019 -- 63rd NSCC (for State of Haryana in National Shootings Championship in Air Pistol 10 M event)</i>	<i>Bronze – Individual Gold – Mix Team Gold - Men’s Team events</i>
9.	<i>In 2018</i>	<i>Became Indian Rank No.1</i>
10.	<i>Asian Games, Indonesia, 2018</i>	<i>Bronze Medal</i>
11.	<i>52nd ISSF World Championship, South Korea 2018</i>	<i>Silver Medal (Team)</i>
12.	<i>2018 -- 62nd NSCC (for State of Haryana in National Shootings Championship in Air Pistol 10 M event)</i>	<i>Bronze - Mix Team Bronze – Men’s Team</i>
13.	<i>2017 -- 61st NSCC (for State of Haryana in National Shootings Championship in Air Pistol 10 M event)</i>	<i>Silver Medal Men’s Senior</i>

5.2. Petitioner-Abhishek Verma was ranked as World’s Rank No.1 and has various other achievements to his credit in National Games held in India and obtaining Gold/ Silver/ Bronze Medals in International Championships where he represented India.

CONTENTIONS (DISCUSSION & ANALYSIS)

6. I have perused the record, heard rival contentions of learned counsel for the parties and shall now proceed to advert to the same and render my opinion thereupon, along with discussion hereinafter.

7. Before adverting to the merits of the case, it would be apposite first to have a look at the provisions of relevant Rules i.e. 3, 4, 9(1)- 9(2) and 11 of the Rules, 2018 *ibid*, viz-a-viz Rules 1 and 2 of The Haryana Outstanding Sportspersons (Recruitment and Conditions of Service) Amendment Rules, 2019. For ready reference, the same are reproduced below:-

**THE HARYANA OUTSTANDING SPORTSPERSONS
(RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2018**

“Rule 3 :Sports discipline to be considered :

(1).Sports disciplines to be considered for appointment in the case of World Championship, Asian Championship, Commonwealth Championship and World University Games shall be as provided under sub-rules (2) and (3).

(2). Sports disciplines included in Olympic Games only shall be considered for appointment under category numbers 2, 5A, 6A or 7A of either Schedule-I or Schedule-II.

(3). Sports disciplines not included in next Olympic Games, but included in either Asian Games or Commonwealth Games, shall be considered for appointment under category numbers 5B, 6B or 7B of either Schedule-I or Schedule-II.

Rule 4 :Method of Recruitment :

(1). Notwithstanding anything contained in any other rule, policy or instruction for the time being in force, an outstanding sportsperson shall be eligible to be appointed to a post strictly as per Schedule-I in case of an individual event or Schedule-II in case of a team event, whichever is applicable:

Provided that an outstanding sportsperson shall be considered for appointment under these rules even if the relevant medal winning performance or participation, as the case may be, was recorded prior to the commencement of these Rules.

(2). A member of a team consisting of upto four players shall be considered under Schedule-I. The Schedule-II shall apply for a member of a team consisting of five or more players.

(3).For consideration under Schedule-II, the outstanding sportsperson must have played in not less than fifty percent of the matches played by the team in that tournament.

(4).For consideration of appointment under these rules, only sports events at senior level shall be considered.

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9(1). An eligible sportsperson shall submit an application in Form-I for individual event and in Form-II in case of team event alongwith proof of outstanding sports achievement, date of birth, eligibility etc. and forwarded by the National Sports Federation recognized, duly signed by the President or the Secretary General of the National Sports Federation, to the Department.

(2). The Department shall recommend to the office of Chief Secretary, the appropriate category of job after verification of original documents within thirty days of the receipt of application to the concerned Department where vacancy is available for appointment of the sportsperson.

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11(1). Notwithstanding anything inconsistent contained in any service rules framed under the proviso to article 309 of the Constitution of India, the provisions of these rules shall prevail.

(2). The policy issued vide notification No. Sports-Estt-DA-I-2014/23501-23555 dated 15th July, 2014 is hereby rescinded.

Provided that a sportsperson whose application is pending under the said policy on the date of notification of these rules shall be eligible to apply under these rules and his previous application shall not be considered. “

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**THE HARYANA OUTSTANDING SPORTSPERSONS
(RECRUITMENT AND CONDITIONS OF SERVICE)AMENDMENT
RULES, 2019**

“1(1). These rules may be called the Haryana Outstanding Sportspersons (Recruitment and Conditions of Service)Amendment Rules, 2019.

(2) These rules shall be deemed to have come into force from the 5th September, 2018.

2. In Haryana Outstanding Sportspersons (Recruitment and Conditions of Service) Rules, 2018 (hereinafter called the said rules), for rule 3, the following rule shall be substituted, namely:-

3. Sports events to be considered:

(1). Sports events to be considered for appointment in the case of World Championship, Asian Championship, Commonwealth Championship and World University Games shall be as provided under sub-rules (2) and (3).

(2). Sports events included in next Olympic Games only shall be considered for appointment under category numbers 2, 5A, 6A or 7A of either Schedule-I or Schedule-II.

(3).Sports events not included in next Olympic Games, but included in either Asian Games or Commonwealth Games, shall be considered for appointment under category numbers 5B, 6B or 7B of either Schedule-I or Schedule-II.”

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8. Undisputedly, the sports discipline of ‘shooting’ was included in the Olympic Games 2016 and also in the Olympic Games 2020 (held in 2021). Petitioners’ claims are based on medals won in events included in sports discipline of ‘shooting’.

9. Ankur Mittal’s claim has been rejected vide impugned order dated 29.11.2018 (Annexure P-14) which simply says that on examination of his application, he has not been found eligible for job under the Haryana Outstanding Sportspersons (Recruitment and Conditions of Service) Rules, 2018. In the written statement, stand taken is that the Double Trap Men Individual event is not included in the immediate next Olympic Games i.e. Olympics, 2020 and, therefore, the petitioner was not eligible for appointment to HCS/HPS on the basis of Gold Medal won by him in Double Trap Men

(Individual) during the 52nd ISSF Championship, 2018 held in Korea. The respondents' stand in case of petitioner Abhishek Verma is that 10 M. Air Pistol Men Team was not included in Olympic, 2020 owing to which the petitioner's claim for appointment of HCS/HPS was not covered by the 2018 Rules as amended on 09.03.2019 retrospectively with effect from 05.09.2018.

10. Claim of petitioner – Abhishek Verma for appointment to HCS/HPS, was rejected, though he was recommended for a Group-B job on the basis of his Bronze Medal in Asian Games-2018. For ready reference, it would be pertinent to reproduce the reasons given in the impugned order dated 21.11.2018 (Annexure P-12), which reads as under:-

“Abhishek Verma is recommended for a Group ‘B’ (other than H.P.S.) job for the Bronze Medal in Asian Games-2018. Regarding the Silver Medal in the 10 M. Air Pistol Men Team event in the 52nd ISSF World Championship, the said “team event” is neither in Olympic Games nor Asian Games nor Commonwealth Games. The “team event” does not qualify under Category-II or 5A or 5B of either Schedule-I or Schedule-II. In fact, the claim made is not bonafide. There was no team performance where team members actively coordinate amongst themselves during the play as in any team game. The team score was obtained by simply aggregating the individual scores in the corresponding individual event. In this case, the Indian team consisted of 3 members with individual rankings as below:-

*Rank 8 :Verma Abhishek
Rank 18 :Mitharaval Om Parkash.
Rank 30 :Rizvi Shahzar*

The team was placed in the 2nd position by simply aggregating the individual scores obtained without any separate team performance.”

11. Basis aforesaid, petitioner –Abhishek Verma was issued appointment letter dated 28.06.2019, Annexure P-14, vide which he was offered the post of Shooting Coach (a Class ‘B’ post). Said offer of appointment was not accepted by the petitioner vide Annexure P-15 dated 09.08.2019. Same was hence cancelled vide AnnexureP-16, dated 06.09.2020.

12. Respondent-State has taken a stand that the 2018 Rules were amended vide notification Annexure R-2 dated 09.03.2019, w.e.f. the original date of the promulgation of 2018 Rules viz. 05.09.2018. In view of the said amendment, words ‘Sports Disciplines’ are

to be read as 'Sports Events' and the words 'Olympic Games' were substituted by the words 'next Olympic Games' [in Rule 3(2)].

13. At this stage, it is pertinent to note the distinction between the terms "sports discipline" and the 'Sports event'. The term "sports discipline" denotes plurality, consisting of more than one formats/events of the same sports discipline, while the term 'sports event' is singular in character denoting only one particular format/event of a sports discipline.

14. As stated, Rules of 2018 were originally notified on 05.09.2018. The 52nd ISSF World Championship was held in Korea from 31.08.2018 to 14.09.2018 where Ankur Mittal represented India. His claim in CWP No. 6584/2018 is based on his achievement on 08.09.2018 in World Championship, Korea by winning a Gold Medal in discipline 'shooting', event-'double trap shooting'. Claim of petitioner - Abhishek Verma also is based on Silver Medal won in the sports discipline 'shooting' event - 10M Air Pistol Men Team in the same tournament. Rules of 2018 which came into force on 05.09.2018 held the field as such till their amendment vide later notification dated 09.03.2019, petitioner's rights under the 2018 Rules, Annexure P-10, had accrued and crystallized on the respective dates of their winning the medals in the said tournament. They had submitted applications/claims on 26.09.2018 (CWP No.6584 of 2018) and 25.09.2018 (CWP No.7651 of 2021) respectively. Till 09.03.2019, therefore, the claims were required to be dealt with and determined in accordance with the said unamended Rules as notified on 05.09.2018.

15. Relevant condition as per Rule 3(1) & (2) of the unamended Rules, 2018 is that in the case of World Championship sports disciplines to be considered shall only be those which are included in Olympic Games under category number 2 of either schedule I (for Individual Event) or schedule II (for Team Event). The Rule *ibid* does not specify in which Olympic Games-past, present or future? Undisputedly, sports discipline of shooting-event 'double trap' was part of the immediately preceding Rio Olympic Games 2016 as shown in certificate issued by the National Rifle Association of India.

16. Vide Sub Rule 4(1) of the unamended Rules, an outstanding sportsperson shall be eligible to be appointed as per schedule I in case of individual event or schedule II in case of a team event, whichever is applicable. Sub Rule 4(2) provides that a member of team consisting of upto four players shall be considered under schedule I, while schedule II would apply for a member of a team consisting of five or more players.

17. Certificate dated 19.09.2018 (Annexure P/3-Colly) issued by the International Shooting Sport Federation shows that petitioner-Ankur Mittal had won the Individual Gold Medal in 'Double Trap Men event during the 52nd ISSF World Championship held from August 31 to September 14, 2018 in Changwon, Republic of Korea. Certificate Annexure P-11 in Ankur Mittal's case shows that sports discipline of shooting-event 'double trap' was part of immediately preceding Rio Olympic Games, 2016. Thus, petitioner Ankur Mittal fulfilled these relevant conditions for appointment under category number 2 of schedule I namely HCS or HPS (with 4-year seniority).

18. Petitioner Abhishek Verma won Silver Medal in 10M Air Pistol Men(Team Event) in the same tournament. The event of 10M Air Pistol Men is in the sports discipline of shooting. Petitioner-Abhishek Verma asserts in para 22 (i) (a) of his petition that the event of 10M Air Pistol Men was included in the Rio Olympic Games- 2016 and was also an event at the subsequent Olympic Games-2020 (both individual and team). He thus avers that he fulfilled all the relevant conditions for appointment under category number 2 of schedule-I i.e. HCS/HPS. However, the respondents plead that the team event of 10M Air Pistol Men is not in the Olympic Games. And, Silver Medal in 10M Air Pistol Men (Team Event) won by the petitioner in the 52nd ISSF World Championship, therefore, did not qualify him for appointment under category No. 2 (HCS or HPS), 5A (Group B) or 5B (Group C) of schedule I (for Individual Event) or Schedule II (for Team Event) as per The Rules, 2018. The respondents' stand shows an admission that sports discipline of 'shooting' was actually included in the Rio Olympic Games-2016 and this sports discipline was also included in the subsequent Olympic Games-2020. As already noted above, Certificate (Annexure P-11 in Ankur Mittal's petition) issued by the National Rifle

Association of India clearly shows that 'Shooting' is/was actually a sports discipline immediately preceding "Rio Olympic Games, 2016".

19. To be noted, that the petitioners were having not even the slightest of inkling as on 05.09.2018 being 24x7 busy in preparation, practice and travel etc. to participate in their tournaments which were taking place around the same time, almost simultaneously that the Rules would be amended retrospectively from 05.09.2018. In any case, they had left the Country with a hope that if they perform as per the Rules then prevailing, they would get commensurate statutory benefits. If the sportsmen, winning medals for the country, proudly at international podium while the National Tricolor flag is hoisted and the National Anthem plays, are to be treated like this, naturally it would leave them totally dejected, demotivated on their return to country, apart from total discouragement for those who dream of representing their country in the future international championships.

20. Settled law is that the benefits admissible and rights accrued under statutory rules cannot be taken away, curtailed or restricted through administrative and executive instructions. It is thus held that the petitioners' statutory rights under the unamended 2018 Rules had accrued/crystallized on the dates of their achievements in the 52nd ISSF World Championship held from 31.08.2018 to 14.09.2018 tournament. Those vested rights could not be taken away, curtailed or restricted through subsequent executive instructions issued vide letter dated 16.11.2018 (Annexure R-1).

21. Unamended Rules of 2018 held the field upto 08.03.2019. The petitioners' claims submitted on 25/26.09.2018 were required to be examined and decided in accordance with the then prevailing rules. If their claims had been properly examined and promptly decided in accordance with the then prevailing 2018 Rules (Annexure P-10), the petitioners would/could have been actually appointed to HCS/HPS as per their entitlement crystallized prior to 09.03.2019.

22. No doubt, The Haryana Outstanding Sportspersons (Recruitment and Conditions of Services) Rules, 2018 were amended through the Haryana Outstanding Sportspersons (Recruitment and Conditions of Services) Amendment Rules, 2019 vide

notification dated 09.03.2019 and the amendment was to be effective retrospectively from 05.09.2018. Yet, the fact remains that the unamended 2018 Rules held the field between the period from their notification on 05.09.2018 till the notification of their amendment on 09.03.2019. The question arises whether in such situation the petitioners' appointments, if they had been actually made before 09.03.2019, would/could have been revoked on the grounds that by virtue of the amendment of 2018 rules notified on 09.03.2019 with retrospective effect from 05.09.2018, they were not eligible for appointment to HCS/HPS. For reasons given hereafter, to my mind, the answer to the question will be 'No'.

23. The Amendment of Rules vide notification dated 09.03.2019 is conspicuously silent about the cases in which the rights for appointment under the pre-amended 2018 Rules had accrued after their promulgation on 05.09.2018 and qua the appointments already made under those rules and the other such cases which were in the process of appointment before issuance of notification dated 09.03.2019. In this connection, it is significant to note that the 2018 Rules notified on 05.09.2018 while rescinding the earlier policy notification dated 15th July, 2014 had specifically provided vide Rule 11(2) that a sportsperson whose application was pending under the said policy on the date of notification of these rules (05.09.2018) shall be eligible to apply under these rules and his previous application shall not be considered. The said Rules (2018 Rules), however, are silent about the appointments of sportspersons which had already made before 5.09.2018 under the earlier policy notification dated 15th July, 2014. It is obvious, therefore, such appointments made before 05.09.2018 had been and remained protected.

24. Since the Amendment Rules 2019 dated 09.03.2019 do not at all touch the earlier provision of Rule 11(2) of 2018 Rules and thus it remained unaltered even after 09.03.2019. The Amendment Rules 2019 are also silent about the appointments of sportspersons which had already made before 09.03.2019. Not only that, they do not even contain any provision whatsoever for a sportsperson whose application was pending under the earlier rules as notified on 05.09.2018 when the Amendment Rules 2019 were notified on 09.03.2019. The logical inference, therefore, is that the appointments of

sportspersons made before 09.03.2019 had remained intact and that the claims based on rights which had accrued upto 09.03.2019 under the earlier rules as notified on 05.09.2018, which were pending on 09.03.2019 were also protected and the said pending claims were/are to be decided under the earlier rules as notified on 05.09.2018. This being the position, the appointments of the petitioners, if they had been made as per unamended 2018 Rules before 09.03.2019, would/could not have been revoked on the ground that by virtue of the amendment of 2018 rules notified on 09.03.2019 with retrospective effect from 05.09.2018 the petitioners were not eligible for appointment to HCS/HPS.

25. In terms of eligibility, the petitioners fulfilled all relevant requirements of unamended 2018 Rules. They had submitted necessary applications on 25/26.09.2018. The delay was on the part of the respondents, for whatever reasons, owing to which they were not appointed upto 09.03.2019 as per their entitlement under the unamended 2018 Rules. Petitioners cannot be made to suffer and denied their legitimate entitlement for appointment to HCS/HPS under the then prevailing 2018 Rules, simply because of the delay and failure on the part of the respondents in appointing them till issuance of notification dated 09.03.2019 thereby amending the 2018 Rules.

26. It has already been held above that the rights of the petitioners for appointment to HCS/HPS in accordance with pre-amended Rules of 2018 then in force had already crystallized/accrued on the dates of their achievements and winning respective medals in the tournament held from 31.08.2018 to 15.09.2018. I have also held that the appointments of the petitioners, if they had been made before 09.03.2019 would/could not have been revoked on the ground that by virtue of the amendment of 2018 rules notified on 09.03.2019 with retrospective effect from 05.08.2018 the petitioners were rendered ineligible for appointment to HCS/HPS. The same analogy would apply to the prior vested rights of the petitioners for appointment as per entitlement under the pre-amended Rules of 2018 then in force which had already crystallized/accrued by virtue of their achievements and winning respective medals in the tournament held from 31.08.2018

to 15.09.2018. Those prior vested rights cannot and should not be taken away and obliterated simply because of the delay and failure on the part of the respondents themselves to appoint the petitioners till issuance of notification dated 09.03.2019 for retrospective amendment of the 2018 Rules.

27. In this connection, I may state that making and implementation of policy including the content and the extent thereof is no doubt within the exclusive domain of the State. It is not for the Court to super impose its views against the policy and/ or interfere with the same, in any manner, so as to accord benefits which are otherwise not contained in the policy. In the premise, this Court ought not to and would not interfere in the policy making domain of the State. Having said that, the Government is well within its right to make policies for promotion of the sports in its State and/ or to achieve the said goal by offering certain cash awards or even out of turn job to the outstanding sports persons. Once there is declared policy to the public knowledge, it is but natural that the sportspersons would have a legitimate expectation that based on the national/international achievements, as the case may be, as mentioned in the sports policy, they would be offered commensurate reward arising therefrom, as on the date of the achievement. When a sportsman starts preparing for a competition, he naturally gives his day and night and works perhaps much more and harder than a non-sports person who has to appear for the competitive examination on achievements through academics.

28. Conversely, if a sportsman even has the slightest of lurking doubt that despite his achievement as per the existing sports policy, he may not be offered what has been publicly promised by the State, he may well choose not to spend his 15 to 20 hours a day of hard work by sacrificing everything else in life. He may rather choose to give up sports and pursue his academic studies like others who are non-sports persons. In fact, it is a legitimate expectation of a sportsman arising out of the promise of State, as per the existing sports policy, as on the date of his achievement. A sportsman's right is crystallized by dint of his hard work of having won national and/ or international medal representing his State or Country, as the case may be on the day of his having won medal for country/

State. In the premise, it would be rather highly inequitable to suddenly turn around and tell a sportsperson that his gold medal or silver medal or the bronze medal which he has won for the country/his State is of no consequence anymore and or is of lesser than the promised consequence by simply telling him that the policy has now been amended and or superseded and the crystallized right as on the date of his achievement has been taken away retrospectively and he shall now have to be contented with the changed policy, of he did not have even the remotest of idea as on the date of his performance. He is thus deprived of the result of his conscious call to pursue his goal for out of turn job on the basis of achievements in sports, instead of working hard on the academic side to improve his academic performance and on that basis to strive for other options/opportunities through competitive examination.

29. Attracted by the incentives offered by the respondents for achievements in sports, obviously the young petitioners would have mainly focussed on performance in sports and devoted their time, attention and energy by diversion from academics and other pursuits with resultant loss of other opportunities and options. In such situation, the doctrines of legitimate expectation and also promissory estoppel qua the incentives offered by the respondents also seem applicable in their favor.

30. As already stated, it is for the State to make policy or change the policy, as has been done in the present case also by superseding the earlier, where there was exemption from the competitive examination. In the new policy not only the competitive examination has been introduced for certain out of turn jobs but in the event of a sportsman seeking exemption from the competitive examination he is entitled only to seek a sports job in the stream of his achievement. However, the said policy, as already opined, does not take away the crystallized right of a sportsman as on the date of his achievement when the old policy held the field.

31. To summarize, it is held that accrued rights of the petitioners could not have been taken away by the State vide an amendment of the Rules and by applying the same with retrospective effect on the petitioners. The law in this respect is also not *res integra*.

Reference may be had to the Constitution Bench Supreme Court judgment in the case titled State of Gujarat v. Raman Lal Keshav Lal Soni 1983 (2) SCC 33 followed by Ex. Capt. K. C. Arora and another vs State of Haryana and others 1984 (3) SCC 281.

32. No doubt, legislature is fully competent to make a law, be it prospective or retrospective. Though retrospectivity of a legislation may not per se be invalid, but it has to be balanced on the anvil of Article 14 by applying it to the facts and circumstances of a particular case. It is no gainsay observing that in case of any inconsistency, Articles 14 and 15 of the Constitution shall override the provision of a Statue. Retrospective application of the legislation must yield, in case it is found that thereby the said Constitutional Fundamental Right is being taken away.

33. In the aforesaid premise, there will also be a serious denial/violation of the Fundamental Rights of petitioners envisaged under Articles 14 and 15 of the Constitution of India.

34. Petitioners herein seem to have been denied equality and meted out with hostile discrimination. In Another similar outstanding sport person from the shooting stream [in CWP No. 14691 of 2020 – Vishwajeet Singh vs State of Haryana and another, decided on 29.01.2021 Annexure P-13], who had also participated the ISSF Junior World Cup, 2014, won the Silver Medal in the Team Championship has been appointed to the HCS (Executive Branch). Though of course, his appointment is against a vacancy reserved for Outstanding Sports Persons (OSP) by selection through competitive examination by the State.

35. The State has also taken a stand that all outstanding sportspersons i.e. petitioners are required to compete for vacancies reserved for outstanding sportsperson in both HCS (Executive Branch) and Haryana Police Service (DSP). They cannot be appointed without being selected in terms of the HCS (Executive Branch) Rules, 2008 (Annexure R-1) or the Haryana Police Service Rules, 2009 (Annexure P-9).

36. Aforenoted contention is again misconceived in view of the non obstante clause in terms of Rule 11(1) of the 2018 Rules reproduced above, according to which

anything inconsistent contained in any service rules framed under the proviso to article 309 of the Constitution of India, the provisions of these rules shall prevail.

37. It is also pertinent to note in terms Rule 9 of the 2018 Rules reproduced above applicable in such cases, the only simple procedure for appointment is that *an eligible sportsperson shall submit an application in the prescribed manner to the Department, who shall recommend to the office of Chief Secretary, the appropriate category of job to the concerned Department where vacancy is available for appointment of the sportsperson.*

38. The position that emerges thus is that qua the petitioner until the new Rules and Sports Policies were promulgated by the State, what held the field was the earlier Rules of 2018 by virtue of which the State all through continued to offer appointments to the eligible outstanding sportsperson of international eminence directly to HCS/HPS, without their having to take the competitive examination. Though now the said direct appointment to HCS/HPS by exempting to appear in the competitive examination has been dispensed with.

39. The nobility of the later Sports Policies of 2019 and 2021 is laudable but at the same time, it cannot be ignored that those who had participated at the international level of competition and represented their country prior to the new Sports Policy and based on their such performance their rights have already crystallized, those rights should be denied by discrimination qua those who in the past have been accorded appointments. It would, therefore, be equitable as a one-time measure, if the petitioners are also accorded the benefits of the Sports Policy as it existed on the date of their performance.

40. Further, the fact of 12 outstanding sports persons having been appointed as D.S.Ps. under the same very 2018 Rules has not been denied by the State. It is not the case of respondents that those 12 persons went through a selection process and/or participated in a competition against any advertisement.

41. Qua availability of vacancy, the respondents in the written statement/ additional Affidavit, have taken the stand that there are no posts of D.S.Ps. available

against which the petitioners can be appointed. Said stand is also contrary to Rule 5 of the 2018 Rules which reads as under:-

“ Rule 5 : Reservation :

Appointments under these rules shall be made against the vacancies reserved for sportspersons. For Para, Blind, Deaf and Special Olympic Sports, the appointments shall be made against vacancies reserved for Persons with Disabilities.

Explanation. - *The Government may at its discretion create special posts for sportspersons so that the lack of vacancies under the sports quota is not an impediment to the appointments under these Rules. ”*

42. That apart, reliance may be had on Rule 3 of the HCS (Executive Branch) Rules, 2008, which reads as under :-

“Rule 3.:Strength and Composition of Cadre :

(1) *The strength and composition of the Cadre shall be such as may be determined by the Government from time to time.*

(2) *The Government shall, at an interval of every three years re-examine the strength and composition of the Cadre and may make such alterations therein as it deems fit :*

Provided that nothing in this Rule shall be deemed to affect the power of the Government to alter the strength and composition of the cadre at any time. ”

Accordingly, posts in HCS (Executive Branch) can be created at any time by the State. Lack of vacancies under Sports Quota is not an impediment to appointment of the petitioners. In any case, the petitioners have placed on record two Advertisements issued by the Haryana Public Service Commission (Annexure P-23 and P-24 in CWP No. 7651 of 2021) according to which 48 posts of HCS (Executive Branch) and 7 posts of DSP (in each advertisement) have been advertised.

43. Similarly, Rule 3 of the Haryana Police Service Rules, 2002 empowers the State Government to make addition to or reduction in and create new posts. Said Rule 3 reads as under :-

“Rule 3 :No. and character of posts : *The Service shall comprise the posts shown in Appendix ‘A’ to these Rules.*

Provided that nothing in these Rules shall affect the inherent right of the Government to make additions to, or reductions in, the number of such posts or to create new posts with different designations and scales of pay either permanently or temporarily. ”

Thus, the stand of respondents qua non availability of vacancy is being noted only to be rejected.

44. Apart from the view taken above, case of petitioner Abhishek Verma for appointment to HCS/HPS is also covered by Rule 4 of the 2018 Rules, even after retrospective amendment with effect from 05.09.2018 vide 2019 Amendment Rules notified on 09.03.2019. Let us see how, as adumbrated in succeeding paragraphs.

45. Rule 4(2) of the 2018 Rules envisages that a team event consisting of upto four persons is to be considered under Schedule-I of the Rules which is meant for individual event. Petitioner (Abhishek Verma) claims that he qualifies to be considered under the said Schedule-I, as his team won the Silver Medal in the International Sports Shooting Federation (ISSF) tournament, 2018. It is not disputed that he had actually participated in the 4 years' World Championship conducted by the International Sports Shooting Federation (ISSF) and represented his country in a team consisting of just 3 members and won Silver Medal therein.

46. So far as the reasoning advanced by the respondents qua the disqualification of performance being a team event, the same has been already rejected by a coordinate bench this Court vide judgment rendered in CWP No. 14691 of 2020 titled as "*Vishwajeet Singh Versus State of Haryana and others*". Speaking for this court, my learned Brother Rajbir Sehrawat, J has *inter alia* held as below:-

"... .. However, in the sport of Shooting, there would not be the reserved players. The players are nominated to the tournament-as a team, with specified number of players, each playing individually but scoring for the team. Hence, there is no question of playing 25% of the matches. All players have to play 100% matches. Hence, this column loses significance in case of sport of Shooting. Moreover, this process of participation and scoring has been placed on record by the respondents themselves, as well as, by the petitioner in the form of the record regarding the tournament. The application moved by the petitioner for obtaining the gradation certificate itself shows the members of the team, which comprised of 3 members; including the petitioner. The medal, certificate of the petitioner itself shows the team to be a 3 member team, including the petitioner. The result of the tournament shows that all the 3 players played the matches and got the individual scores, which were aggregated to make to a team score. Hence, the argument of the counsel for the respondents is also liable to be noted only to be rejected."

47. The stand of the State in its written statement dated 11.08.2021 is that 10 M. Air Pistol Men Team event is neither in the Olympic Games nor in Asian Games nor even in Commonwealth Games. Relevant portion of said written statement reads as under :-

“ Besides, the petitioner applied for Government job for his another achievement i.e. Silver Medal in 52nd I.S.S.F. World Championship held at Changwon (Korea) from 31.08.2018 to 15.09.2018 (10 M. Air Pistol Men Team Event) in the answering department on 25.09.2018. After examination of the said application, the petitioner was not found eligible for Government job on the basis of his 2nd achievement i.e. Silver Medal in 52nd I.S.S.F. World Championship, 2018 (10 M. Air Pistol Men Team Event), since 10 M. Air Pistol Men Team was not included in Olympic, 2020. The same team event is neither in Olympic Games nor Asian Games nor Commonwealth Games. It is further submitted that team event does not qualify under Category No. 2 or 5-A or 5-B of either Schedule-I or Schedule-II of Haryana Outstanding Sportspersons (Recruitment and Conditions of Service) Rules, 2018. ”

48. Whereas, petitioner-Abhishek Verma has produced Certificate, Annexure P-21, of his participation in the 10-Meter Air Pistol Men Individual and also in the 10 Meter Pistol Mixed Team event in the Japan Olympics-2020 (though held in 2021). The State then later filed additional Affidavit dated 17.02.2022, wherein the stand taken is that in the Olympic Games 2020 held in Japan, petitioner-Abhishek Verma participated in the Mixed Team Event, whereas in the ISSF World Championship held at Korea, he had participated in the Men's Team Event and obtained Silver Medal.

49. The respondents rely upon Rule 3 of 2018 Rules as amended retrospectively with effect from 05.09.2018 vide the Haryana Outstanding Sportspersons (Recruitment and Conditions of Service) Amendment Rules, 2019. Their stand is that in the ISSF World Championship 2018 held in Korea, petitioner-Abhishek Verma had participated in the Men's Team Event and obtained Silver Medal. On that basis, it is contended that the inclusion of Mixed Team event in the next Olympic Games 2020 (held in 2021 in Japan) does not bring his case within the scope of the 2018 Rules as amended on 09.03.2019 retrospectively with effect from 05.09.2018. To me, this stand/contention the respondents' does not seem acceptable, for the reasons given hereafter.

49.1. Firstly, the relevant parts of 2018 Rules even after amendment vide notification dated 09.03.2019 and Schedule II thereof only speak of team, entitlements of the medal winning team and its members. They are wholly silent about any further categorization of the teams as men's team, women's team and mixed team. The Rules and schedule *ibid* also do not provide separately and category wise entitlements of the teams and their members for medals won by men's team, women's team and mixed team. Logical inference, therefore, is that men's team, women's team and mixed team are to be treated at par. Benefits admissible to men's team and its members would also be admissible to women's team and its members as also to mixed team and its members and vice versa. As noted above, petitioner Abhishek Verma has produced Certificate (Annexure P-21) showing his participation in the Mixed Team event in the Japan Olympics 2020 (held in 2021).

49.2. Furthermore, Rule 4 of 2018 does not specify any Men Team or Women Team or a Mixed Team but it merely refers to a team. If, as contended, a team is to consist male members alone, still in the absence of any specific provision to exclude women under Rule 4 of the Haryana Outstanding Sportspersons (Recruitment & Conditions of Service) Rules 2018, one cannot possibly argue that male gender shall not be taken to include a female. It would have been a different matter had the Rules specified that the team specifically prohibits a female as its constituent and therefore, consideration of claim on the performance of a mixed team was then perhaps totally out of question. In my opinion, anyone (any gender) who participates in any sports event as a member of mixed team is covered by Rule 4 of the Haryana Outstanding Sportspersons (Recruitment & Conditions of Service) Rules, 2018. A team remains a team, be it a male team, female team or mixed team. The team does not lose its status and attributes as such, merely because of being a mixed team.

49.3. Secondly, section 13 of the General Clauses Act, 1897 shows that male includes female. For ready reference the section *ibid* is reproduced herein below:-

*“13. Gender and number – In all [Central Acts] and Regulations, unless there is anything repugnant in the subject or context,-
(1) words importing the masculine gender shall be taken to include females; and
(2) words in the singular shall include the plural, and vice versa.”*

This provisions in the Act ibid seem to show that men's team, women's team and mixed team are to be treated at par and that the benefits admissible to men's team and its members would also be admissible to women's team and its members as also to mixed team and its members and vice versa. Taking a view contrary thereto, in my opinion, would be against the spirit, intent and content of the Rules, besides being regressive and leading to absurd consequences. To my mind, the interpretation resorted to and stand taken by the respondents for negating the petitioner's claim merely on the ground that the petitioner's team winning the Silver Medal in ISSF tournament 2018 was a mixed team, being combination of male and female, does not stand judicial scrutiny.

49.4. There is no specific recital in Rule 4 of the Haryana Outstanding Sportspersons (Recruitment & Conditions of Service) Rules 2018 to the effect that masculine gender shall not be taken to include a feminine gender. This being the position, one cannot possibly argue a mixed team shall be excluded from the purview of the Rules. It would have been a different matter if the rules had prohibited a female from being a constituent team.

49.5. That being the case, and taking support of Section 13 of General Clauses Act, the word team as mentioned in Rule 4 (supra) is to be read so as to mean a team of either two males or two females or a mixed team of one male and one female. The respondents have misconstrued the relevant provision in the Rules for resisting the petitioner's claim on the ground that 10 M. Air Pistol Men Team was not included in Olympic Games of 2020.

50. Irrefragably, Abhishek Verma has participated in the 10M Air Pistol Mixed Team Event in Olympic Games-2020 held in Tokyo, Japan. As already noted, apart from winning Silver Medal in Men Team Event in 10M Air Pistol in 52nd ISSF World Championship 2018, he has also participated in Men Individual Event in 10M Air Pistol

shooting in the Japan Olympics 2020. Obviously, the specific team event in question was thus included in Olympic Games-2020 held after promulgation of Rules in 2018. In the premise, even the requirement of Rule 3(2) of 2018 Rules, as amended on 09.03.2019 retrospectively with from 05.09.2018 also stood satisfied.

51. Resultantly, case of Abhishek Verma for appointment to HCS/HPS is fully covered by Rule 4 of the 2018 Rules, even after retrospective amendment with effect from 05.09.2018 vide notification dated 09.03.2019.

52. I am of thus of the opinion that the respondents were not justified in rejecting Abhishek Verma's claim on the ostensible ground that the 10 M Air Pistol Men Team was not included in Olympic Games, 2020. Respondents are merely projecting and harping on a self-supposed artificial and hyper technical distinction between a team and a mixed team, which is wholly without any basis at all and is not even envisaged in the relevant Statutory Rules. The Rules are being misread and misinterpreted to justify the impugned rejection of the petitioner. It is, therefore, held that Abhishek Verma is entitled for being considered/recommended for appointment to HCS/HPS being covered both by pre amended Rule 4 of the 2018 Rules as well as its later amendment. Thus on both counts the claim of the petitioner ought to have been accepted.

CONCLUSION

53. As an upshot of discussion in the preceding part, it is held that respondents were not justified in rejecting the petitioners' claims, which were covered under the pre-amended 2018 Rules for appointment to HCS/HPS as well as post amendment. It is a fit case for directing respondents to consider the cases of petitioners and to offer appointment to them in accordance with the unamended 2018 Rules, as they were in force before their amendment vide notification dated 05.03.2019.

54. Accordingly, both the petitions are allowed, impugned order dated 29.11.2018, Annexure P-14 (in CWP No. 6584/2019- Ankur Mittal), the note/order dated 04.12.2018 on application dated 25.09.2018, Annexure P-11 and order/note dated 21.12.2018, Annexure P-12 (in CWP No. 7651/2021- Abhishek Verma) rejecting the

petitioners’ claim for appointment to HCS/HPS are set aside. A direction is issued to the respondents to consider the cases of petitioners and offer appointment to them, by taking into consideration the petitioners’ option, commensurate with their achievements at International level in accordance with the unamended 2018 Rules, as they were in force before their amendment vide notification dated 05.03.2019. Necessary exercise be carried out within 60 days of receipt of certified copy of instant order/ judgment.

18.04.2022
vs/mahavir/ashish

(ArunMonga)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No