



2024-DHC-2023-00



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: April 09, 2024*

+ W.P.(C) 4955/2018, CM APPLs. 19134/2018, 19136/2018,
27863/2018 & 23640/2022

ARUN KUMAR SINGH

..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC with
Ms. Priya Singh, Adv.
Mr. Ravinder Agarwal, Adv. for
UPSC
Ms. Madhumita Bhattacharjee, Adv.
for R-3 and R-4

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 19134/2018

This is an application filed by the by the petitioner / applicant seeking permission to bring additional documents on record.

For the reasons stated in the application, the same is allowed and the additional documents are taken on record.

The application is disposed of.

**CM APPL. 23640/2018**

This is an application filed by the by the respondent Nos.3 and 4 / applicants seeking permission to bring additional document on record.

For the reasons stated in the application, the same is allowed and the additional document is taken on record.

The application is disposed of.

CM No. 27863/2018

This application has been filed by the petitioner with the following prayers:-

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased:-

i. Direct replacing page number 597 of the paper book, volume III with Annexure A-1 of the instant application; and/or

ii. To grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case.

For the reasons stated in the application, the same is allowed and disposed of.

W.P.(C) 4955/2018

1. This petition has been filed by the petitioner with the following prayers:

“In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

i. Issue a Writ, Order or Direction quashing of the order dated 04.01.2018; passed in the Contempt Petition No. 294 of 2017; in the Original Application No. 4551 of 2014; by



the Hon'ble Central Administrative Tribunal, Principal Bench, Delhi;

ii. Issue a Writ, Order or Direction directing the Respondents to give promotion to the Petitioner with all consequential benefits and seniority in terms of the order dated 11.11.2016 passed by the Hon'ble Central Administrative Tribunal, Principal Bench, Delhi in the Original Application No. 4551 of 2014; and/or

iii. Grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case."

2. In effect, the petitioner is challenging the order dated January 4, 2018, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Contempt Petition No.294/2017, in Original Application No.4551/2014 ('OA', for short), whereby the Tribunal has disposed of the Contempt Petition by passing the following order:

"3. In view of the above order having been passed by UPSC, consequent upon liberty granted by the Tribunal, we are satisfied that the direction contained in the order dated 11.11.2016 stands complied with. Thus, proceedings are accordingly dropped. If the petitioner is aggrieved of the order passed by UPSC, he is at liberty to seek remedial measures in accordance with law."

3. It may be stated here that the contempt petition has been filed by the petitioner alleging non-compliance of order dated November 11, 2016 passed by the Tribunal in OA 4551/2014 whereby the Tribunal has disposed of the OA by stating in paragraphs 5.1 onwards as under:-

"5.1. The pendency of departmental and criminal proceedings have been amplified in Explanation-1 given



below the rule and the adverse thing/ entry is amplified in Explanation-2. In terms of Explanation-1, the departmental/criminal proceeding shall be treated as pending only if a charge sheet has been issued to the officer or filed in the Court as the case may be. In Explanation-2, it is amplified that the adverse thing which comes to the notice of the State Government and renders the officer unsuitable for appointment to the IAS should be treated as having come to the notice of the State only if the same has been communicated to the Central Government, which in turn is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential. In the instant case, this situation clearly did not exist. Hence, this cannot be a ground on which the Integrity Certificate of the applicant was withheld by the State Government just prior to the meeting of the Selection Committee, even though, in their earlier proposal, the State Government had certified his integrity. As far as departmental proceeding is concerned, the State Government had informed the Select Committee that the same were only contemplated against the officer at the time of the meeting of the Selection Committee. No charge sheet had been issued to the officer. Hence, as per the explanation mentioned above, it cannot be said that departmental proceedings were pending against the officer warranting withholding his integrity. The other circumstances in which the integrity could have been withheld also did not exist in the instant case. Thus, it is clear that the State Government was not justified in withholding the integrity of the officer before the Selection Committee meeting held on 20.2.2014. From this, it follows that the inclusion of name of the officer figuring in the suitability list prepared under Regulation 5(5) should have been unconditional and not provisional.

6. Learned counsel for the applicant had argued that the impugned order 24.04.2014 deserves to be quashed qua the applicant as his name has been included in the same provisionally and the respondents should be directed to



include the applicant's name in this list without making the inclusion provisional.

6.1 In this regard, we notice that the impugned order dated 24.04.2014 is Select List of 2012 notified under Regulation-7(2) of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955. Regulation-7 reads as follows:-

“7. Select List:- (1) The Commission shall consider the list prepared by the Committee along with-

(a) the documents received from the State Government under regulation 6;

(b) the observations of the Central Government and, unless it considers any change necessary, approve the list

7(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government [and the Central Government] of the changes proposed and after taking into account the comments, if any, of the State Government [and the Central Government], may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

7(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge-sheet or a charge-sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional.

7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of



approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under subregulation (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as unconditional, to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of forty-five days or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.

Provided further that in the event of any new Service or Services being formed by enlarging the existing State Civil Service or otherwise being approved by the Central Government as the State Civil Service under Clause (j) of sub-regulation (1) of regulation 2, the Select List in force at the time of such approval shall continue to be in force until a new select list prepared under regulation 5 in respect of the members of the new State Civil Service, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2).

Provided also that where the select list is prepared for more than one year pursuant to the second proviso to sub-regulation (1) of regulation 5, the select lists shall remain in force till the 31st day of December of the year in which the meeting was held to prepare such lists or upto



sixty days from the date of approval of the select lists by the Commission under this regulation, whichever is later.”

Proviso to Regulation-7(3) empowers the Commission to include name of an officer in the Select List provisionally if he has been charge sheeted after inclusion of his name in the select list. However, in this case the applicant's name was provisionally included in the select list notified under Regulation -7(2) because of the recommendations of the Selection Committee under Regulation-5(5). Since we have already come to the conclusion above that provisional inclusion of applicant's name in the select list prepared under Regulation-5(5) was not justified, provisional inclusion of his name in the select list under Regulation-7(2) also as a consequence of the same, cannot be sustained. Hence, the impugned order qua the applicant deserves to be quashed. We order accordingly. The respondents shall, however, remain at liberty to examine the case of the applicant afresh under Regulation-7 and take appropriate decision regarding inclusion of the name of the applicant in the select list notified under Regulation-7(2). The aforesaid decision should be taken by them within a period of eight weeks from the date of receipt of a certified copy of this order. This O.A. is disposed of accordingly. No costs.”

4. It is the plea of the petitioner that it is only if the charge sheet has been issued to the Officer or filed in the Court, as the case may be, that the integrity certificate can be withheld. He submitted that in the instant case, the said situation does not exist and as such the integrity certificate could not have been withheld. Therefore, the select list prepared should have been unconditional and not provisional.

5. The stand of the UPSC / respondent No.2, before us is the following:



“3. The W.P. has been filed by the Petitioner for quashing the Order dated 04.01.2018 of the Hon’ble CAT, Principal Bench, New Delhi in C.P. No. 100/294/2017 filed by Shri Arun Kumar Singh against alleged non-compliance of the Order dated 11.11.2016 of the Hon’ble Tribunal in O.A. No. 100/4551/2014 relating to provisional inclusion of his name in the Select List of 2012 for promotion to IAS of West Bengal Cadre. The Petitioner has contended in the WP that:-

i) In the Select List of 2012 prepared by the SCM held on 20.02.2014 for promotion to IAS of West Bengal Cadre, the name of the Petitioner was included provisionally subject to grant of integrity certificate by the State Government. However, the name should have been included in the Select List unconditionally as his integrity was withheld wrongly by the State Government.

ii) In O.A. No. 100/4551/2014 filed by Shri Arun Kumar Singh, the Hon’ble CAT, Principal Bench, vide Order dated 11.11.2016, held that integrity should not have been withheld by the State Government and the name of Shri Arun Kumar Singh should have been included unconditionally in the Select List. Therefore, provisional inclusion of his name in the Select List should have been made unconditional for promotion to IAS. However, inclusion of his name in the Select List has been treated as deemed provisional, vide Order dated 31.07.2017 issued by the UPSC.

iii) The Petitioner be granted promotion to IAS of West Bengal Cadre from the date other officers included in the Select List of 2012 were promoted.

4.1 It is respectfully stated that a Selection Committee Meeting was held on 20.02.2014 for preparation of Select List of 2012 against 25 vacancies for promotion to IAS of West Bengal Cadre. The name of the Petitioner was at Sl. No. 16 in the eligibility list submitted by the State Government for preparation of the said Select List. The



State Govt. vide letter dated 19.02.2014 had withheld the integrity certificate in respect of the Petitioner. In view of this, the name of Shri Arun Kumar Singh was included at SI. No. 15 in the Select List of 2012 provisionally subject to grant of integrity certificate by the State Government. After consideration of the observations received from the State Government vide their letter dated 06.03.2014 and the observations received from the Government of India, DoP&T vide their letter dated 19.3.2014, the Select List was approved by the Commission on 16.04.2014 and acted upon by the Govt. of India, DoP&T, vide Notification dated 24.04.2014.

4.2 Aggrieved by provisional inclusion of his name in the Select List due to withholding of Integrity Certificate by the State Government, Shri Arun Kumar Singh filed OA No.4551/2014 before the Hon'ble CAT, Principal Bench, New Delhi. The O.A. was disposed of by the Hon'ble Tribunal, vide Order dated 11.11.2016, with following observations / directions: -

“5.1Hence, as per the explanation mentioned above, it cannot be said that departmental proceedings were pending against the officer warranting withholding his integrity. The other circumstances in which the integrity could have been withheld also did not exist in the instant case. Thus, it is clear that the State Government was not justified in withholding the integrity of the officer before the Selection Committee meeting held on 20.2.2014. From this, it follows that the inclusion of name of the officer figuring in the suitability list prepared under Regulation-5(5) should have been unconditional and not provisional.

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6.1Proviso to Regulation-7(3) empowers the Commission to include name of an officer in the Select List provisionally if he has been chargesheeted after inclusion of his name in the select list. However, in this case the applicant's name was provisionally included in the select list notified under Regulation-7(2) because of the recommendations of the Selection Committee under Regulation-5(5). Since we have already come to the conclusion above that provisional inclusion of applicant's name in the select list prepared under Regulation-5(5) was not justified, provisional inclusion of his name in the select list under Regulation- 7(2) also as a consequence of the same, cannot be sustained. Hence, the impugned order qua the applicant deserves to be quashed. We order accordingly. The respondents shall, however, remain at liberty to examine the case of the applicant afresh under Regulation-7 and take appropriate decision regarding inclusion of the name of the applicant in the select list notified under Regulation-7(2). The aforesaid decision should be taken by them within a period of eight weeks from the date of receipt of a certified copy of this order. This O.A. is disposed of accordingly.”

The Hon’ble Tribunal observed that provisional inclusion of the name of Shri Arun Kumar Singh in the Select List based on the wrong withholding of Integrity Certificate by the State Govt. was not justified because at the time of the SCM, the reason furnished by the State Government for withholding the integrity certificate was that disciplinary proceedings was under contemplation and charge sheet was yet to be issued. Therefore, the integrity should not have been withheld by the State Government and the name of Shri Singh should have been included unconditionally in the Select List.



4.3 As the matters relating to withholding/certifying of integrity and issuance of charge sheet in respect of SCS officers are within the exclusive domain of the State Govt., the Hon'ble Tribunal's Order dated 11.11.2016 was forwarded to the State Govt., vide Commission's letter dated 13.01.2017, for consideration whether to challenge or to implement the Order of the Hon'ble Tribunal.

4.4 In response, the State Govt. vide their letter dated 21.03.2017 informed that there is no direction of the Hon'ble Tribunal upon the State Govt. for issuance of integrity certificate. Further, the Select List was notified on 24.04.2014 and disciplinary proceeding against Shri Arun Kumar Singh was also started with issuance of charge sheet on 20.03.2014, which was earlier than the date of notification of the Select List. The State Government further stated that in view of this position, it was not possible for the State Govt. to issue integrity certificate in respect of Shri Singh in view of issuance of charge sheet against Shri Singh on 20.03.2014 and the said disciplinary proceedings were still pending.

4.5 Taking into account the intimation by the State Government that the disciplinary proceedings initiated vide chargesheet dated 20.03.2014 issued to Shri Arun Kumar Singh were still pending and the fact that it was not possible for the State Government to issue the integrity certificate in respect of him, the Commission in compliance of Order dated 11.11.2016 of the Hon'ble Tribunal, issued Order dated 31.07.2017 indicating that in light of the special conditions of the case, the name of Shri Arun Kumar Singh in the Select List of 2012 for promotion to IAS of West Bengal cadre shall be deemed to be provisional in accordance with the proviso to Regulation 7(3) of the IAS(Appointment by Promotion) Regulations, 1955, subject to clearance in the disciplinary proceedings pending against him and grant of integrity certificate by the State Government."



(emphasis supplied)

6. The State of West Bengal/ respondent No.3, has also filed its counter affidavit, wherein, in paragraphs, 4B(i) to 4B(iv), it has been stated as under:

“4 B. It is most respectfully submitted that:

- i. The Petitioner Sri Arun Kumar Singh filled O.A. No. 4551/2014 in the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi after being aggrieved due to provisional inclusion of his name in the select list for promotion to the Indian Administrative Service from State Civil Service of West Bengal as per provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.*
- ii. That vide order dated 11.11.2016 passed in connection with OA No. 4551/2014, the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi held that provisional inclusion of the name of the petitioner in the Select List as per regulation 5(5) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 was not justified and as such provisional inclusion of his name in the select list as per regulation 7(2) of the said regulations, as a consequence of the same, cannot be sustained. Accordingly the Hon'ble Central Administrative tribunal, Principal Bench, New Delhi quashed the notification vide No. 14015/24/2013-AIS(I)-A DATED 24/4/2014 issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions under the Government of India relating to inclusion of the name of the Petitioner in the Select List of 2012 for filling up promotion quota vacancies in the West Bengal Cadre of IAS under State Civil Service Category provisionally subject to grant of integrity certificate by the State Government.*

A Copy of the order of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi passed on 11.11.2016 in connection with OA no. 4551/2014 is



hereinafter annexed to and marked as ANNEXURE-3-4/1.

- iii. *That by the said order the respondents were given liberty to examine the case of the applicant afresh under Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations 1955 and take appropriate decision regarding inclusion of the name of the applicant in the Select List notified under said Regulations.*
- iv. *The Government of West Bengal subsequently intimated the Union Public Service Commission vide letter no. 35-P&AR(Vig)L dt. 24/5/17 of the Personnel and Administrative Reforms and e-Governance Department that the disciplinary proceeding against Petitioner was started earlier than the date of notification of the Select List and as such it is not possible to issue integrity certificate in respect of Sri. Singh at a later stage. Also it was informed to the UPSC that power under regulation 7 of the IAS (Appointment by Promotion) Regulations, 1955 is exclusively exercised by the Union Public Service Commission and hence in view of the order dated 11.11.2016 of the Hon'ble CAT, Principal Bench, it is the prerogative of the UPSC to examine the case afresh taking into account all facts on record. A copy of the letter vide no. 35-P&AR(Vig)L dated 24.05.2017 of the Personnel and Administrative Reforms and e-Governance Department is hereinafter annexed and marked as ANNEXURE R-3-4/2."*

7. From the above, it is noted that the UPSC had passed the order dated July 31, 2017. The plea of the petitioner primarily is that this order of the UPSC is not in accordance with conclusion drawn by the Tribunal. The plea looks appealing on a first blush but on a deeper consideration, it is noted that though the Tribunal has allowed the O.A. by noting that the State Government had informed the Select Committee that departmental proceedings were only contemplated



against the officer at the time of meeting of the Select Committee and no chargesheet has been issued to the petitioner but what is important to be noted from the stand of the parties before us is that before the select list was notified on April 24, 2014, a chargesheet was issued to the petitioner on March 20, 2014. So, in that sense, it is to be considered whether the chargesheet was actually issued to the petitioner on March 20, 2014, before the select list was notified on April 24, 2014 and if yes, what is the effect thereof, as the UPSC in its order dated July 31, 2017 has relied upon proviso to Regulation 7(3) of the IAS (Appointment by Promotion) Regulations, 1955, to contend that the name of the petitioner in the select list is provisional.

8. Surely, given the stand taken by the UPSC and the State of West Bengal in these proceedings, the veracity of the order dated July 31, 2017 cannot be gone into in these proceedings.

9. In fact, the Tribunal having granted the liberty to the petitioner to seek such remedial measure in accordance with law, we are of the view that no fault can be found with the impugned order of the Tribunal, as with the passing of the order dated July 31, 2017, the order of the Tribunal dated November 11, 2016 has been complied with.

10. Therefore, the Tribunal is justified in passing the order dated January 04, 2018, in the manner, we have reproduced in paragraph 2 above.

11. In this regard, we may note the position of law as settled by the Supreme Court in an eventuality like this. The Supreme Court in the case of *J.S. Parihar v. Ganpat Duggar and others*, (1996) 6 SCC 291, has in paragraph 6, held as under:-



“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake



committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.”

(emphasis supplied)

12. Similarly, the Supreme Court in the case of ***Prithawi Nath Ram v. State of Jharkhand and others***, (2004) 7 SCC 261, in paragraphs 5 and 8, has held as under:-

“5. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari v. Union of India [(2001) 10 SCC 496 : 2002 SCC (L&S) 756] . The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in Niaz Mohd. v. State of Haryana [(1994) 6 SCC 332] we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey



the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher court. The State took diametrically opposite stands before this Court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.

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8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion



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*regarding acceptability or otherwise of the application
for initiation of contempt proceedings.”*

(emphasis supplied)

13. If that be so, liberty shall be with the petitioner to seek such remedy as available in law against the order dated July 31, 2017 passed by the UPSC / respondent No.2. The writ petition and pending application, if any, are closed in the above terms.

CM No. 19136/2018 (for interim direction)

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

APRIL 09, 2024/aky