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IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

214

CWP-21755-2019 (O&M).
Date of Decision: 19.05.2025.

RITU LATHER

... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Rahul Sharma, Advocate, and
Mr. Arpandeep Narula, Advocate,
for the petitioner.

Mr. Rahul Dev, Addl. A.G. Haryana,
for respondents No.1 to 4.

Mr. Kanwal Goyal, Advocate,
for respondent No.5/HPSC.

Mr. Ravinder Malik (Ravi), Advocate,
for respondent No.6.

VINOD S. BHARDWAJ, J. (ORAL)

Seeking setting aside of the order dated 13.08.2019 (Annexure P-6) whereby the nomination of the petitioner for consideration to be included in Register -C maintained under Rule 14 of the Haryana Civil Services (Executive Branch) Rules, 2008 for the year 2019 was rejected, the

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instant writ petition has been filed with a further prayer that claim of the petitioner for inclusion of her name in the said register be considered.

The facts, in brief, are extracted as under: -

The petitioner was appointed as a Block Development and Panchayat Officer with the respondents on 11.01.2011. The Haryana Civil Services (Executive Branch) Rules, 2008 (here-in-after referred to as Rules of 2008) provide for the mode of appointment to the service, which includes appointment from the Register -C. Vide public notice dated 30.05.2019, the State requested the various heads of the Department(s) to send a list of District Development and Panchayat Officers/Block Development and Panchayat Officers for consideration to include their names in the Register-C against 11 vacancies of the Haryana Civil Services (Executive Branch). Vide communication dated 09.07.2019, the Department of Rural Development and Panchayat informed the candidates to submit their higher degree and/or any other certificate issued before and after coming into Government Service by 10.07.2019. The petitioner's name was mentioned at Sr. No.9 and was included in the list of persons to be considered for entry in Register-C of the Haryana Civil Services (Executive Branch).

It is further averred that one FIR No.26 dated 26.06.2015 under Sections 406, 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code and Section 13 (1) of the Prevention of Corruption Act, had been registered at Police Station, State Vigilance Bureau, Hisar. The petitioner had no role in commission of any offence and was never even mentioned as a suspect in the

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said case. An inquiry was still conducted but she was also found innocent in the inquiry conducted by the Deputy Superintendent of Police, State Vigilance Bureau, Hisar, which such finding was also approved by the Director, Vigilance, Haryana vide his letter dated 22.08.2016. Hence, no vigilance case was pending against the petitioner as on the date when the applications were invited for the inclusion of names in Register-C against the Haryana Civil Services (Executive Branch) in the year 2019. The petitioner submitted a letter dated 13.07.2019 regarding her vigilance clearance and for consideration of her nomination to Register -C under Rule 14 of the Haryana Civil Services (Executive Branch) Rules, 2008, for the year 2019. The aforesaid claim of the petitioner was corroborated vide letter dated 18.07.2019 addressed by Director, State Vigilance Bureau, Haryana, reiterating that after due investigation, the petitioner was found innocent and a final report under Section 173 (2) Cr.P.C. (as it was then) had already been prepared on 04.12.2017 against other accused. The office of the Chief Secretary addressed a letter dated 19.07.2019 to the Principal Secretary, Government of Haryana, in the Development and Panchayat Department, to take necessary action in the light thereof. The respondents, however, rejected the claim of the petitioner for being nominated to Register -C vide order/letter dated 13.08.2019 on two grounds i.e. firstly, that investigation in the FIR was pending and secondly, that vide order dated 15.05.2018 recovery of Rs.3,93,000/- had been ordered from the petitioner under Rule 7 along with imposing punishment of stoppage of one annual increment. Significantly, the

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aforesaid order of penalty dated 15.05.2018 was the subject matter of challenge before the High Court in CWP No.17927 of 2018 at the instance of the petitioner and the operation of the order inflicting punishment as well as recovery was stayed by the High Court vide its order dated 03.08.2018. Despite the above, the nomination of the petitioner was not forwarded for the year 2019.

It is further averred that even though the petitioner had filed CWP No.17927 of 2018, the matter could not be taken up further after the grant of initial stay due to COVID–19 restrictions, hence, the petitioner filed a CM-6517-CWP-2021 for withdrawal of the writ petition and the same was dismissed as withdrawn vide order dated 29.06.2021. The petitioner thereafter preferred a memorial before the Governor of Haryana, challenging the order dated 15.05.2018. Said memorial was accepted and the Governor of Haryana, reduced the punishment of stoppage of one annual increment with cumulative effect to stoppage of one annual increment only vide order dated 30.04.2022. It is averred that as a result thereof, the order dated 15.05.2018 came to an end to the said extent while the recovery was deposited. Hence, as on the date of nomination to Register 'C', the reasons cited by the respondent did not hold any legal sanctity. The same were thus misplaced and misconceived. Thereafter, the increment had also been released to the petitioner.

The State of Haryana issued the criteria for making recruitment to the Haryana Civil Services (Executive Branch) from Register A-1 and

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Register 'C' under Rules 9 and 14 of the Rules of 2008 vide notification dated 22.12.2017 providing weightage as under: -

i	*Service record with particular reference to ACRs for the last 8 years*	*70% weightage or 70 marks*
ii	*Relevant experience*	*13% weightage or 13 marks*
iii	*Academic achievements*	*13% weightage or 13 marks*
iv	*Appreciation letter(s) issued on the basis of ACR as per Government instructions during the last 8 years*	*04% weightage or 04 marks*

Since 4% weightage or 4 marks were to be granted for the appreciation letter, the petitioner applied for the grant of appreciation letters on the basis of the ACR's for the years 2014-15; 2015-16 and 2018-19 on 19.06.2019 and 24.06.2019 i.e. much before the cut-off date i.e. 12.07.2019 but the same were issued only on 16.09.2020 (for the years 2014-15; 2015-16 and on 01.02.2021 for the year 2018-19. The petitioner thus claimed that benefit of the said marks ought to be extended to her as there was no fault on her part. Be that as it may, aggrieved of the order of the respondents declining to send the name of the petitioner for nomination to Register 'C' dated

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13.08.2019, the instant writ petition had been filed before this Court. Vide order dated 23.08.2019, the petitioner was provisionally permitted to participate in the interview and her result was ordered to be kept in a sealed cover.

The learned counsel submits that as per the selection criteria of 2017, the marks of the petitioner out of 87.5% would calculate to 67.025. The same are detailed as under: -

Sr.No.	*Service record with particular reference to the ACR's for the last 8 years*	*ACRs*	*Marks*
1	*The petitioner is entitled for the marks as per ACR's of 8 years*	*2011-12 (Outstanding)* *2012-13 (Outstanding)* *2013-14 (Outstanding)* *2014-15 (Outstanding)* *2015-16 (Outstanding)* *2016-17 (Outstanding)* *2017-18 (Outstanding)* *2018-19 (Outstanding)*	
2	*Remarks*	*Since the petitioner has completed 8 years 6 months up to the cut-off date i.e. 12.07.2019, she is entitled for marks 68.60, considering ACRs outstanding for 07*	*68.60*

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		years 228 days and good for 137 days as decided by Government criteria.	
	Relevant Experience	*Since the petitioner has completed 8 years 6 months up to the cut-off date i.e. 12.07.2019, she is not entitled for marks under this head of experience.*	*0*
3	*Academic Achievements*	*Before service – LLB (2nd Division) in 2010 year.* *After service – LLM (2nd Division) in 2012 (being additional post graduation degree)*	*3.5* *0.5*
4	*Appreciation letters issued on the basis of ACR's as per Government Instructions during the last 8 years.*	*For the first appreciation letter two (2) marks would be assigned and thereafter 1 mark would be assigned for each subsequent appreciation letter subject to maximum marks.*	*4*
		Total Marks	*76.6*
		87.5% of Total	*67.025*

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Alleging that rightful claim has been wrongly ignored, the present writ petition was filed on various grounds.

WRITTEN STATEMENT BY THE DEPARTMENT RESPONDENTS NO.2 TO 4.

Written statement had been filed on behalf of respondents No.2 to 4 wherein it is admitted that Register-C is maintained by the office of the Chief Secretary and Rule 14 of the Haryana Civil Services (Executive Branch) Rules, 2008 prescribes the eligibility criteria. It is averred that one of the pre-requisites for consideration is that the person should not be facing disciplinary proceedings and that no penal action is being contemplated against him/her. It is averred that the Chief Secretary asked for the names of the eligible District Development and Panchayats Officers/Block Development and Panchayats Officers (DDPOs/BDPOs) for consideration for the post of HCS (Executive Branch) vide its letter dated 30.05.2019 by 28.06.2019. The State Government reconsidered the matter and again requested to send the list of eligible District Development and Panchayats Officers/Block Development and Panchayats Officers (DDPOs/BDPOs) up to 12.07.2019 whereupon the names of 23 eligible candidates were sent to the office of the Chief Secretary vide letter dated 12.07.2019. Name of the petitioner was also considered but since the Vigilance Department had conducted an inquiry No.04/13 and recommended registration of an FIR against the petitioner vide letter dated 11.05.2015, hence, the criminal

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proceedings were being contemplated against the petitioner on the said date. The petitioner tried to scuttle the investigation and accordingly moved an application to the State Vigilance Bureau for reinvestigation whereupon a report was submitted by the DSP, Vigilance, vide letter dated 22.08.2016 to the effect that no incriminating evidence came on record, which could prima facie establish the involvement of the petitioner in the said offence though it had been reported by the DSP that all the officials of the office of BDPO, Bhiwani were involved in the commission of the said offence. The cancellation report had been submitted by the State Vigilance Bureau before the competent Court of jurisdiction and the same was yet to be accepted back then. It was thus stated that till the time the cancellation report is not accepted by the Court of competent jurisdiction, it cannot be said that no criminal action is contemplated against an employee.

It is also averred that a charge sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016, for major penalty on account of causing loss to the State Exchequer to the tune of Rs.3,93,000/- was served on the petitioner and after departmental inquiry, she was found guilty of the charges. Consequently, vide order dated 15.05.2018, the punishment of recovery of Rs. 3,93,000/- and stoppage of one annual increment with cumulative effect was imposed upon the petitioner. Undisputedly the said order was the subject matter of challenge in CWP No.17927 of 2018, wherein an interim order dated 03.08.2018 was passed staying the impugned order dated 15.05.2018 imposing penalty. The said writ

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petition was eventually withdrawn on 29.06.2021. Hence, the petitioner cannot be considered to have been exonerated from the charges levelled against her, as such, she did not fulfil the criteria for being recommended for the post of HCS (Executive Branch). Thus, the petitioner's name was rightly not recommended by the Department.

It is further stated that in so far as the claim of the petitioner regarding issuance of appreciation letters for the year 2014-15, 2015-16 and 2018-19 is concerned, the appreciation letters to the petitioner for the year 2014-15 and 2015-16 are not in dispute, however, the issuance of appreciation letter for the year 2018-19 was kept pending on account of disciplinary proceedings initiated against the petitioner under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016, for misconduct during the period 03.02.2019 to 08.01.2020, which were still pending at that time. The said disciplinary proceedings were eventually decided in her favour vide order dated 11.12.2020 and hence, an appreciation letter for the year 2018-19 was also issued to her vide letter dated 01.02.2021. However, the said appreciation letter, having been issued after the cut-off date, could not be taken into consideration.

It is further averred in the said written statement filed on behalf of the respondents that pursuant to the orders passed by this Court, the petitioner was provisionally interviewed by the Haryana Public Service Commission, however, she was not found successful in the result that had been declared.

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WRITTEN STATEMENT BY STATE OF HARYANA ON BEHALF OF RESPONDENT NO.1.

A separate reply had also been filed by the Deputy Secretary to the Government, Haryana, Personnel Department, on behalf of respondent No.1, pointing out that the Department had not forwarded the name of the petitioner even though they had sent the list of eligible persons. The said reply being formal, does not require any further deliberation or consideration.

REPLICATION TO THE REPLY OF RESPONDENTS NO.2 TO 4.

Replication to the written statement filed on behalf of respondents No.2 to 4 had been filed by the petitioner, wherein the averments contained in the written statement were disputed and denied and it was pointed out that since a cancellation report had already been submitted, it cannot be held that any criminal/penal proceedings were being contemplated against the petitioner. It was also specifically averred that the stand of the respondents was in conflict with the judgment of the Hon'ble Supreme Court in the matter of ***Union of India and others Vs K.V. Jankiraman and others, reported as 1991 (4) SCC 109*** wherein it was held that the disciplinary/criminal proceedings can be said to have been initiated only when a charge-memo in a disciplinary proceeding or a charge-sheet in a criminal prosecution is issued to the employee. It is averred that as no charge sheet had been issued against the petitioner; hence, the criminal proceedings cannot be said to have been initiated. It is further averred that no separate charge sheet was issued in relation to any alleged misconduct for the period 03.02.2019 to 08.01.2020 and that any such description that has been given

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in the written statement is factually incorrect and misleading. It has further been averred that the petitioner was eligible to be considered for the post of HCS (Executive Branch) under the Rules of 2008 since the punishment of stoppage of one annual increment with cumulative effect was challenged in writ petition CWP No.17927-2018 and the said order of 15.05.2018 had already been stayed. Later the petitioner filed a memoralia to the Governor of Haryana. The said punishment was reduced to stoppage of one annual increment without cumulative effect vide order dated 30.04.2022. He submits that at the time of consideration of the name of the petitioner for inclusion in Register-C, no disciplinary proceedings were pending, hence, the respondents were bound to consider the petitioner. It is averred that Rule 14 contemplates that a person should not be facing departmental proceedings and there should not be any pending action against him and since there were no ongoing disciplinary proceedings against the petitioner at the time of consideration and the cancellation report having already been submitted, the petitioner could not be said to be ineligible. It is further averred that even the punishment of stoppage of one annual increment without cumulative effect and recovery of the amount is a minor punishment under the Haryana Civil Services (Punishment and Appeal) Rules, 2016. Hence, the same could not have been a bar against consideration of the petitioner.

Additional Facts

It is undisputed that consequent upon the interim order passed by this Court on 23.08.2019, the petitioner had appeared for the Interview.

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This Court vide order dated 02.08.2023 noticed that whether the prayer of the petitioner would survive or not would depend upon the result as, in case the petitioner got more marks than the last selected candidate in the category in which the petitioner applied, then only the present petition would survive otherwise the issue involved herein would only be rendered academic. The Haryana Public Service Commission was accordingly directed to prepare the provisional result of the petitioner and produce the same before the Court in a sealed cover.

In compliance thereto, the result was produced before this Court on 04.08.2023. The same was, however, not opened and returned to the authority. In the interim order dated 16.08.2023, the Commission was directed to write an appropriate letter to the Government, seeking the complete record and thereafter to process the claim of the petitioner provisionally and appreciation certificate as on date as per the criteria and present the result in a sealed cover. Finally, on 20.10.2023, it was recorded by this Court that the provisional result had been perused and the matter would need consideration on merit. Thus, the only possible conclusion which flows therefrom is that in the event the plea of the petitioner being accepted, she being higher in the order of merit, as compared to the last selected candidate would be entitled to be appointed. The matter was heard on 08.07.2024, whereupon the respondent-State was directed to file a status report as regards its claim of pending disciplinary proceedings/charge-sheets against the petitioner. In compliance thereto, a status report by way of

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affidavit dated 09.05.2025 has been filed to apprise the status of the chargesheet pending against the petitioner as well as any other pending criminal case or departmental inquiry. In relation to FIR No.26 dated 26.06.2015, it is submitted that as per the status report dated 20.03.2025, obtained from the Superintendent of Police, Anti-Corruption Bureau, Hisar, the petitioner was found innocent and was placed in column No.2 of the challan form. Vide judgment dated 30.08.2024, the trial Court acquitted the other accused persons who were tried in the said case. In reference to the status of the departmental proceedings against the petitioner, the then Block Development and Panchayat Officer, Bhiwani, it is stated that the petitioner was proceeded only against under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, vide Memorandum No.2121-5 ECD-1-2013/18602 dated 19.12.2013 in relation to purchase of 200 street lights and upon conclusion of the enquiry, the Government had imposed the punishment of stoppage of one annual increment with cumulative effect vide order dated 15.05.2018. It was acknowledged that the said punishment order was initially stayed by the High Court and thereafter, the Governor of Haryana reduced the penalty of stoppage of one annual increment with cumulative effect to the stoppage of one annual increment without cumulative effect. It is also informed that a penalty of Rs. 3,93,000/- stands deposited by the petitioner in the treasury vide Challan GRN No.0082491128 dated 22.09.2021 and interest of penalty amount was also deposited on 28.09.2021 vide GRN No.0082644693.

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ARGUMENTS OF THE PETITIONER

Learned counsel for the petitioner has vehemently argued that action of the respondent in rejecting the candidature of the petitioner for being entered in Register – C of the HCS (Executive Branch) on the ground of contemplation of criminal action due to registration of FIR No.26 dated 26.06.2015 and the stoppage of one annual increment having been imposed upon her are misconceived in as much as on the last date i.e. 12.07.2019, the investigation in the criminal matter had already been completed and in the chargesheet finally filed by the State Vigilance Bureau, the petitioner was placed in column No.2 having been found innocent. It was also argued that the State Vigilance Bureau had earlier submitted a report in the year 2017 pointing out that the petitioner was found innocent during investigation of the aforesaid FIR, which was approved by the Director, State Vigilance Bureau. Thus, no criminal action was contemplated or was pending against the petitioner. A mere pendency of the final adjudication of the FIR cannot be said to be contemplating pending penal action against the petitioner, since the State had already found the petitioner to be innocent. He further contends that at no point of time, the petitioner was ever summoned either by the trial Court under Section 193 Cr.P.C. or as an additional accused under Section 319 Cr.P.C. and no charge was ever framed. Thus, the objection of the respondent State in this regard was misconceived and was not based upon a correct understanding of the statutory provisions.

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It is further submitted that so far as the reference made in the impugned order about the pending disciplinary proceedings is concerned, the same was also incorrect since the disciplinary proceedings had already come to an end on 15.05.2018. The operation of the order of punishment had already been stayed by the High Court vide order dated 03.08.2018, hence, no disciplinary proceeding was pending against the petitioner on the said date. He further argues that as per the settled law laid down by the Hon'ble Supreme Court in the matter of ***Union of India and others Vs K.V. Jankiraman and others, reported as 1991 (4) SCC 109***, a disciplinary proceedings/criminal case can be said to be pending only on issuance of a charge memo and/or filing of the chargesheet. Once no charge memo was pending and the proceedings had already been concluded, hence, the interpretation of the respondents that a disciplinary proceeding was pending against the petitioner is bereft of merit and deserves to be rejected. It is further pointed out that the punishment finally imposed upon the petitioner by the Governor vide order dated 30.04.2022 is only to the effect of stoppage of one annual increment without cumulative effect, which is a minor penalty under Rule 4 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016. He contends that the respondents have not been able to refer to any other statutory provision or any instructions issued by them on the basis whereof, the petitioner could be held ineligible.

Learned counsel for the petitioner further contends that in so far as the objection raised by the respondents about the initiation of another set

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of disciplinary proceedings is concerned, the same was never the basis of rejection of the claim of the petitioner and even the said disciplinary proceedings have been ordered to be dropped vide order dated 11.12.2020 since no charge was reported to have been proved against the petitioner.

ARGUMENTS OF THE RESPONDENTS

Learned State counsel, on the other hand, submits that the petitioner did not fulfil the eligibility conditions prescribed under the Rules of 2008 and since she was facing disciplinary proceedings and was not cleared from the vigilance angle, hence, the case was rightly declined.

Learned counsel appearing on behalf of the Commission contends that they had considered the recommendation made by the State after the shortlisting of candidates as per service rules and would have no further role in the matter.

Learned counsel for private respondent No.6, however, submits that the said respondent has been working since 2019 and that three posts are lying vacant; hence, his selection be not set aside since the claim of the petitioner can even be adjusted against the vacant posts.

CONSIDERATION

I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition with their able assistance.

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Before proceeding further in the matter, it would be appropriate to make a reference to the impugned order dated 13.08.2019. The same reads thus: -

> *"On the above stated subject vigilance department vide their letter dated 12.07.2019 informed that until inquiry against you in FIR No.26, dated 26.06.2015 is not decided till then it is not possible to clearance certificate to the official. Apart from this vide office order dated 15.05.2018, recovery of Rs.3,93,000/- is ordered against you and your one annual increment is stopped under Rule 7. Against the above said order you had filed CWP No.17927 of 2018, wherein the Hon'ble High Court vide order dated 03.08.2018 stayed the order dated 15.05.2018 passed by this office. Therefore, due to the above said matter your name is not sent for nomination to Register-C in HCS."*

The two reasons assigned by the respondent for not recommending the name of the petitioner for nomination to Register-C in the HCS (Executive Branch) are as under: -

(i) As per the vigilance department report dated 12.07.2019, the petitioner was named in FIR No.26 dated 26.06.2015 and a final decision on the chargesheet had not been taken;

(ii) An office order dated 15.05.2018 directing recovery of Rs. 3,93,000/- along with stoppage of one annual increment with cumulative effect had been imposed against the petitioner. (It was acknowledged and is undisputed that the said order was

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stayed vide order dated 03.08.2018 passed in CWP No.17927 of 2018).

It would also be appropriate to refer to the provisions of the Haryana Civil Services (Executive Branch) Rules, 2008. Rule 14 thereof reads thus: -

"14(1) The secretary to government in the Development and Panchayat Department shall, by a date to be determined by the Government, prepare a list of District Development and Panchayat Officers / Block Development and Panchayat Officers not more than five times the number of vacancies and submit the same for the consideration of a committee with Chief Secretary as Chairman and two such other officers as members, as may be nominated by the government from time to time:

Provided that unless the Government otherwise directs regarding the age, the name of a person shall be submitted who:-

(a) (i) has completed eight years continuous government service

(ii) has not attained the age of forty-five years on or before the date on which the names are required to be submitted to the Committee, and

(iii) <u>is not facing disciplinary proceedings against whom action is not being contemplated</u>; and

(iv) <u>is clear from vigilance angle</u>;

(b) Is a graduate of a recognized University.

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> *(2) the committee mentioned in sub-rule (1) shall consider all such names and prepare a list equal to twice the number of vacancies of persons considered suitable for being entered in register C. The list shall be sent to the commission for recommending, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry into register C, and thereafter the names of the persons so selected shall be entered in the register C."*
>
> (Emphasis supplied)

As per the aforesaid rule, the requirement was that a person should have completed 08 years continuous government service and should not have attained the age of 45 years on or before the date on which the names are required to be submitted to the Committee and should not be facing disciplinary proceedings, against whom action is not being contemplated and is clear from vigilance angle. It is only the aforesaid clauses (a) (iii) and (iv) of the proviso to Rule 14(1) that the respondents have declined to recommend the name of the petitioner for entering in Register -C.

It would now also be appropriate to refer to the specific reply filed by the respondents as contained in para. No. 5, which is extracted as under: -

> *"That the Vigilance Department conducted a preliminary inquiry No. 04/13 and recommended vide letter dated 11.05.2015 for registration of an FIR against the petitioner. Accordingly, an FIR No. 26 dated 26.06.2015 u/s*

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406,409,420,467,468,471,120B IPC and sec 13(1) of the Prevention of Corruption Act was registered against the petitioner. This in itself prima facie leads to inference that criminal proceedings were being contemplated against the petitioner. At this stage, the petitioner in order to halt further investigation in the said FIR, i.e., submission of challan, etc. against her, moved an application to the State Vigilance Bureau for re investigation. The DSP, Vigilance after re inquiry submitted a report vide letter dated 22.08.2016 stating that no incriminating evidence came on record which prima facie establishes the involvement of the petitioner in the aforesaid offences, though it has been reported by the DSP, Vigilance in his report that all other officials of the office of BDPO were involved in the commission of aforesaid offences. It is relevant to mention here that the said cancellation report has been submitted by SVB before the competent court of jurisdiction and the same is yet to be accepted by the Court of competent jurisdiction. Moreover, all the funds released/ expenditure incurred out of Government funds in the o/o BDPO are always authorised by the BDPO being the drawing and disbursing authority of his office. Therefore, the re-investigation report submitted by DSP Vigilance cannot be said to the final step in this matter. The said report is also subject to acceptance by the competent Court, Therefore, till the time said cancellation report is dully accepted by the court of competent Jurisdiction, it cannot be said that no criminal action is being contemplated against the petitioner Besides, the petitioner was also charge sheeted u/r 7 of the Haryana Civil Services (Punishment & Appeal) 2016 for major penalty on account of causing loss to the State exchequer to the tune of Rs. 3,93,000/-and after departmental inquiry she was found guilty of the charges.

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Consequent thereupon, vide order dated 15.05.2018, punishment of recovery of Rs. 3,93,000/- and stoppage of one annual increment with cumulative effect was imposed upon the petitioner. The said order was challenged by the petitioner before the Hon'ble High Court in CWP No. 17927 of 2018, wherein the Hon'ble Court vide interim order dated 03.08.2018 stayed the operation of recovery issued vide order dated 15.05.2018. The writ petition was not decided on merits and the same was dismissed as withdrawn vide Court order dated 29.06.2021. Hence, the petitioner cannot be considered to be exonerated of the charges leveled against her. Therefore, the petitioner does not fulfill the eligibility criteria to be recommended / nominated to the post of HCS (Executive Branch). Accordingly, the name of the petitioner was not recommended to the office of respondent No. 1 for nomination to the post of HCS (EB) against Register 'C', while sending/recommending the names of 23 other eligible officers vide letter dated 12.07.2019."

It would also be appropriate to make a reference to the status report filed by the respondents in relation to the status of proceedings arising out of the said FIR. Relevant Para No.4 is extracted as under: -

"4. That during the course of investigation, Ms. Ritu Lathar and Sh. Hari Bhagwan Sharma, both BDPOs, were found innocent and placed in Column No. 2 of the challan form. Moreover, the Hon'ble Additional Sessions Judge, Bhiwani, vide order dated 30.08.2024, acquitted the following accused namely Sh. Shyam, Proprietor, Jai Dadi Sati Enterprises, Bhiwani, Sh. Rajbir Singh, Proprietor, Balaji Enterprises, Bhiwani, Smt. Babita

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Devi, Panch, Smt. Prakashi Devi, Panch, Kaluwas. However, Sh. Ramesh Kumar, former Sarpanch, Kaluwas, Sh. Rajesh Singla, Proprietor, Iron Store, Sh. Dinesh Kumar, Proprietor, Shyam Marble, Sh. Hanuman Kaushik, Proprietor, Jagannath Earth Mover, Sh. Jitendra Singh, former Village Secretary, Kaluwas and Sh. Jitendra, Proprietor of Dadi Sati Jaabde Enterprises were convicted."

In the said factual background, it would be essential to examine the scope of/ intent behind the proviso under Rule 14 (1) (a) (iv). The expression used therein by the Legislature is "is clear from vigilance angle." The said expression gains significance since the respondents have interpreted it to mean "<u>that there should be no vigilance FIR.</u>" The ground of rejection specifically mentions that until inquiry against the petitioner in case FIR No.26 is not finally decided, it is not possible to grant clearance certificate. Thus, clearance from vigilance angle has been linked to final outcome of a criminal case that is registered. The said interpretation of the respondent-State is contrary to the plain language of the Statute. The proviso under reference does not use the expression 'FIR' or its "Final outcome." Hence, even though there may not be any FIR formally registered but still a person may not be clear from vigilance angle (although such decision has to be based on some objectivity) and at the same time, even though there may be a criminal case registered in which an employee was initially a suspect but is not an accused. The legislative intent was to exclude an employee, who is not clear from vigilance angle and it was consciously not linked to outcome of

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any proceedings initiated by the vigilance. The Legislature thus reflected its awareness that given the long drawn administrative and judicial process of giving a final burial to a proceeding once initiated, its mere pendency should not operate against an employee who was even though initially named or was a suspect but on investigation was found innocent by Vigilance. The clearance hence prescribed was from "Vigilance Angle" and not from a "Court Angle." It was not the intent of the Legislature to link the two and hence, it cannot be so applied by the respondents. The prominence being to the "angle of vigilance", the interpretation has to lean only in favour of the legislative intent more-so when such legislative intent is neither in conflict with any other clause nor it tends to defeat the Statute. The decision is thus prima facie based on an interpretation that does not flow from plain reading of the clause and hence deserves to be rejected.

Further, it is undisputed that the Director, State Vigilance Bureau, Haryana had sent a communication dated 18.07.2019 to the Chief Secretary, specifically pointing out that the petitioner had already been found innocent and the challan had been prepared against the other ten accused on 04.12.2017. The respondents have also acknowledged in their reply that the petitioner had been found innocent in the inquiry report submitted by the Deputy Superintendent of Police in the year 2016. It is not the case of the respondents that at any point of time, prior thereto or subsequently, the aforesaid report of the Deputy Superintendent of Police was doubted or was found to have been prepared on account of certain malicious considerations

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and the matter was reinvestigated qua the findings drawn in favour of the petitioner. Thus, the findings recorded by the Deputy Superintendent of Police in his report dated 22.08.2016, to the effect that there was no incriminating evidence against the petitioner, on record, remained unrefuted till the culmination of the proceedings. The inquiry of the Deputy Superintendent of Police as recorded on 22.08.2016 and as reiterated by the Director, State Vigilance Bureau, Haryana, vide intimation sent to the Chief Secretary himself on 18.07.2019 shows that the vigilance had no objection against the petitioner and that they had cleared the petitioner, having found her innocent and upon noticing that there was no incriminating material against her. Thus, the rejection of the claim of the petitioner for being considered for inclusion in Register-C, on the aforesaid ground, cannot be said to be based upon a correct appreciation of the statutory provisions. Even if for the sake of arguments and without conceding to the same, for any criminal proceedings to operate as an impediment against right of a person to be considered, the law as elucidated by the Hon'ble Supreme Court in the matter of ***Union of India and others Vs K.V. Jankiraman and others, reported as 1991 (4) SCC 109*** mandates that a criminal proceeding can operate as a bar against consideration of an employee only in case chargesheet had been filed against such an employee. In the present case, no final report under Section 173 Cr.P.C. against the petitioner had ever been filed at any point of time.

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Thus, examining it from either of the perspectives, the reason regarding registration of FIR No.26 dated 26.06.2015, assigned against the rejection of the claim of the petitioner is misconceived and is accordingly rejected.

The unfair play by the respondents is further highlighted from the response of the respondents to a specific ground of challenge as recorded in Para No.16 (iii). The same are extracted as under: -

> "*iii. That the similar situated person/candidates i.e. Rakesh Kumar Sandhu Deputy Director, O/o Director General Development and Panchayat Department, Haryana and Gangandeep Singh DDPO against whom the following FIR were registered:*

Rakesh Kumar Sandhu Deputy Director	*FIR No.241, dated 04.06.2019, under Section 166, 167, 192, 34, 403, 406, 408, 409, 420, 467, 468, 471, 474, 120-B of IPC, P.S. Tosham, District Bhiwani.*
Gagandeep Singh DDPO	*FIR No.195, dated 06.11.2018, under Section 306 of IPC, PS. Pillu Khera, District Jind.*

> *The nominations of both the above stated candidates Rakesh Kumar Sandhu Deputy Director, O/o Director General Development and Panchayat Department, Haryana and Gangandeep Singh DDPO have been recommended for consideration to Register-C maintained under Rule 14 of HCS (Executive Branch) Rules, 2008 for the year 2019 despite the*

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fact that the above stated FIR(s) are pending against them and the nomination of the petitioner is rejected on the ground that investigation of FIR against her is pending. However, the investigation is already completed and petitioner is found innocent by the Vigilance Bureau and challan against rest of the accused persons is already prepared on 04.12.2017 as evident from letter dated 18.07.2019 and letter dated 19.07.2019."

Reply

(iii) That in reply to contents of para 16 (iii) of the petition, it is submitted that in both these cases i.e. Sh. Rakesh Kumar Sandhu and Sh. Gagandeep Singh no preliminary inquiries were conducted by the Vigilance Department and straight away FIRS have been registered by the police on complaints and the investigation are underway, therefore, until and unless the investigating agency prima facie comes to the conclusion that there is substantial material against these DDPOs, it cannot be inferred that they are facing criminal proceedings or are being contemplated. Whereas, so far as the case of present petitioner is concerned, it is submitted that the Vigilance Department conducted a preliminary inquiry and recommended for registration of an FIR against the petitioner. Accordingly, an FIR No. 26 dated 26.06.2015 u/s 406, 409, 420, 467, 468, 471, 120B IPC and sec 13 (1) of the Prevention of Corruption Act. This in itself prima facie infers that criminal proceedings are being contemplated against the petitioner. At this stage, the petitioner in order to halt the further action in the said FIR i.e. submission of challan etc. against her, moved an application to the State Vigilance Bureau for re-investigation. The DSP, Vigilance after re-inquiry submitted a report that no

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incriminating evidence came on record which prima facie establishes the involvement of the petitioner in the aforesaid offence, though it has been reported by the DSP, Vigilance in his report that all other officials of the office of BDPO were involved in the commission of aforesaid offences. It is relevant to mention here that the said cancellation report is yet to be accepted by the Court of competent jurisdiction. Moreover, all the funds released/expenditure incurred out of Government funds in the 0/0 BDPO is always authorized by the BDPO, being the drawing and disbursing authority of its office. Therefore, the re-investigation report submitted by the DSP, Vigilance cannot be said to be a correct one, however, the said report is subject to acceptance by the competent Court of law. Hence, the case of the petitioner cannot be equated with the case of two other DDPOs as mentioned in this sub para of the petition. Besides, the aforestated criminal proceedings, the petitioner has been charge sheeted u/r 7 for major penalty on account of causing loss to the State exchequer and after departmental inquiry she has been found guilty of the charges. Consequent thereupon, vide order dated 15.05.2018 an order of recovery of Rs. 3,93,000/- and for the stoppage of an annual increment with cumulative effect was issued. The said order was challenged by the petitioner before the Hon'ble High Court in CWP No 17297 of 2018, wherein the Hon'ble Court vide interim order dated 03.08.2018 stayed the recovery issued vide order dated 15.05.2018. The writ petition is still pending adjudication before Hon'ble High Court. In the meanwhile, the petitioner challenged the said punishment order before the Governor of Haryana by filing a memorial and during the pendency of said memorial, the petitioner had deposited Rs. 3,93,000/- thereupon, the Governor of Haryana vide orders dated 30.04.2022 disposed of the

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memorial by restoring her one annual increment with immediate effect, which was stopped vide order dated 15.05.2018 by the State Govt. Hence, the petitioner cannot be considered to be exonerated of the charges leveled against her at the time of cut of date, i.e., 12.07.2019."

The respondents thus do not dispute that the said two officers had cases registered against them which involved 'moral turpitude' as prescribed by the State, however, justified that as no inquiry was conducted by vigilance, hence, registration of FIR would not stand in their way for consideration. This Court fails to find any rationality as to how a case of a person against whom FIR has been registered but vigilance angle not inquired into can be on any better footing than a person against whom, despite registration of FIR, the vigilance gives a clear-cut finding of innocence. This Court is often bewildered a such stances being adopted by officials, and that too at the "Secretary Level", which is the highest decision making executive authority, which may lead only to one of the three reasons behind the same: -

(i) They have no sense of judicial approach and understanding of their own rules; or

(ii) They have never cared to examine any case and have simply decided the matter as was directed, to appease some interests; or

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(iii) They have maliciously misapplied the wrong interpretation to harm an employee.

Whatever be the cause, it certainly reflects either a poor acumen or a poorer integrity by the highest seat of an executive decision-making authority. Since the petitioner is not alleging any malice or bias in the present case, the same can thus be assumed as a display of subpar acumen, which is not a very comforting reason either.

Position in law needs no further re-iteration that consideration for promotion is a right vested in an employee and its denial for arbitrary, whimsical or irrational reasons cannot be upheld in a judicial review. The petitioner thus could not have been denied consideration for the said reason.

While considering the second reason that has been assigned i.e. that an employee ought not to be facing any disciplinary proceedings against whom action is not being contemplated; counsel for the respondent State submits that there is some error in the reproduction and that the rule in fact should be "**is not facing disciplinary proceedings or against whom action is being contemplated**."

The aforesaid proviso to Rule 14 (1) (a) (iii) is significant and hence requires examination of the expressions used and their similarity as well. This proviso excludes both categories of employees i.e. firstly, who is facing a disciplinary proceeding or secondly, against whom disciplinary proceeding is contemplated.

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'To contemplate' is to "think carefully about the doing of or the possibility of doing of something" i.e. disciplinary action. Hence, for fulfilling the said condition, a disciplinary action may not have been actually executed but is being considered seriously and with concern/attention. In the former part, the expression is '**not facing disciplinary proceedings**.'

So far as the question of whether any action was being contemplated against the petitioner as on 12.07.2019 is concerned, the respondents have relied upon only the punishment order dated 15.05.2018, the same being an outcome of a concluded disciplinary proceeding, hence, ground of 'contemplation of an action' thus cannot be read to exist.

The expression "**facing disciplinary proceedings**" must be understood in the context of the 'continuing or an ongoing disciplinary proceedings' as against a concluded disciplinary proceeding the outcome whereof is sub judice before a Court. The expression "**facing**" is action word, i.e. a verb which reflects a continuing cause. Thus, the disciplinary proceedings should be in continuation as on the date when the case is being considered. Undisputedly, the disciplinary proceedings had already culminated in an order of punishment dated 15.05.2018. The same was thereafter sub judice as a part of a challenge before a competent court which such sub judice proceeding cannot be said to be in continuation of a disciplinary proceeding against an employee. It would be a travesty to conclude that a pending case before the writ Court is an extension/continuation of a disciplinary proceeding, more so when it is not

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the Department that is in a writ petition against a decision taken by them and it is only an employee who has approached the High Court against the said order.

Despite a specific query, counsel for the respondent State as well as the Haryana Public Service Commission, failed to refer to any instructions on the basis whereof a person/employee may be held to be ineligible for being brought in Register-C under the Rules of 2008, where the proceedings have already been concluded.

There seems to be a valid reason behind the same. So far as the finality of the disciplinary proceedings is concerned, the same may either result in a person being exonerated; be punished with a minor penalty or be punished with a major penalty. Each one of the said punishment would respectively govern the fate of the employee and entail its consequences. The eligibility or ineligibility/disqualification shall flow therefrom. However, when the proceedings are contemplated or are ongoing, final outcome is unknown, hence, the candidate is excluded to avoid any further implications, contemplating a worst scenario. The Legislature has shown its conscious awareness and distinction between contemplated disciplinary action and ongoing proceedings and it chose not to refer to finalized/concluded disciplinary proceedings. The essential nature of the outcome changes from a ’proceeding’ to a ‘penalty’ or ‘order’. It cannot be assumed that it was an erroneous omission on the part of Legislature but shows conscious intent about the stages which were to lead to an exclusion.

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There is no presumption of an oversight against the Legislature unless it is well reflected from a reading of the Statute. An exclusion being denial of a right of consideration, the same has to be express. In absence of the omission being evident, negligence or oversight cannot be assumed against Legislature. Such action is then deemed conscious and deliberate. Since the consequences of disciplinary proceedings flow from the final outcome of the same, hence, it is a considered decision of the Legislature to incorporate in the proviso, only the contingency where the disciplinary proceedings have not been finalized.

Significantly, the aforesaid order dated 15.05.2018 imposing the aforesaid penalty had also been stayed by the High Court in CWP No.17927-2018 vide order dated 03.08.2018. Under the given circumstances, it was not open to the respondents to contend that, notwithstanding the operation of the order having been stayed, yet, the petitioner was still ineligible. As a matter of fact, the respondents were thereafter obligated to treat the impugned order dated 15.05.2018 as *non est* for the purposes of consideration of the claim of an employee in terms of Rule 14 of Haryana Civil Services (Executive Branch) Rules, 2008. In not doing so, the respondents have given effect to an order imposing a penalty notwithstanding the order of stay passed by the High Court. An order of stay halts the effect of the order so as to prevent any further harm to the rights of the aggrieved. It was clearly laid down by the Hon'ble Supreme Court in the matter of **Shree Chamundi Mopeds Ltd. Vs. Church of South India**, reported as **(1992) 3 SCC 1** that an order under stay will not

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be operative from the date of the order of stay. Since other than the penalty imposed, there would have been no other impediment, by continuing to recognize the penalty, the respondents have, in reality, given effect to an order granting stay by the Constitutional Court.

Moreover, the said punishment already stands reduced to stoppage of one annual increment without cumulative effect. Since the punishment would relate back to the date of its passing, even the same came to an end on 15.05.2019 i.e. much before the closing date of submission of the application for nomination to Register-C of HCS (Executive Branch).

Considering from either of the perspectives, the counsel for the respondents have failed to refer to any statutory provision, instructions or office order which would operate as a bar against consideration of the claim of the petitioner or justify the communication dated 13.08.2019.

There was thus no just or sufficient cause to decline the consideration of the petitioner for the reasons cited in the order of rejection, hence, the impugned communication is liable to be set aside.

A specific query was posed, to which there was no denial that there were vacant posts still under the said Register 'C' to be filled up from eligible persons. This Court does not lose its attention from the fact that the private respondent who was then promoted, may not have been a party to any mischief and any change of status after nearly 06 years may also be unjust to him. Hence, the equities shall also be taken into consideration while parting with the final direction.

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Consequently, the instant writ petition is allowed. The respondents No. 1 to 4 are directed to consider the eligibility and entitlement of the petitioner, on the basis of objective criteria and recommend her to the Haryana Public Service Commission as per the criteria within a period of one month. The Commission shall thereafter notify the final result (since the petitioner has already participated in the interview provisionally and subject to final outcome of the writ petition). The recommendation, if any, made in favour of the petitioner shall be w.e.f. the date when the names of the juniors of the petitioner were recommended and in any case not later than 02 months. The petitioner, however, shall be entitled to the benefits of the pay only notionally w.e.f. the said date and actually from the date of such appointment or period of three months of the receipt of a certified copy of this order, whichever is earlier.

Taking into consideration the peculiar circumstances of the case, it would not be appropriate to dislodge private respondent No.6 and it is held that his promotion be protected, however, he would not be entitled to claim seniority over the petitioner.

Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

May 19, 2025. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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

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