

(2023) 12 SC CK 0028
In the Supreme Court Of India
Case No : Civil Appeal No. 8142 Of 2023

State Of Haryana And Others

APPELLANT

Vs

Dinesh Singh And Another

RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 309, 311(2)
Haryana Civil Service (Executive Branch) Rules, 2008 — Rule 3, 7, 8, 9, 9(a), 9(a)(ii), 9(a)(iii), 9(1)(a)(ii), 9(1)(a)(iii), 9(1)(a), 9(b), 9(1)(b), 9(2), 17, 34
All-India Services (Discipline and Appeal) Rules, 1969 — Rule 3, 3(1)
All India Services , (Discipline and Appeal) Rules, 1955 — Rule 7, 7(1)
Uttar Pradesh Civil Services (Classification, Control and Appeal) Rules, 1930 — Section 49A
Central Civil Services (Classification-(SIC) Control and Appeal) Rules, 1965 — Rule 10(1)(a), 55
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 17(1)((a)
Haryana Civil Services (Punishment and Appeal) Rules, 2016 — Rule 7

Citation : (2023) 12 SC CK 0028

Hon'ble Judges : M.M. Sundresh, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Aishwarya Bhati, Alok Sangwan, Poornima Singh, Sumit Kumar Sharma, Samar Vijay Singh, Rajat Sangwan, Vaibhav Yadav, Anurag Kulharia, Vishnu Tallapragada, Vipul Dahiya, Apoorv Yadav, Keshav Mittal, Sabarni Som, Shanti Ranjan, Bhavishya Ranjan, Shweta Pandey, Rameshwar Singh Malik, Jitesh Malik, Beena, Gopal Das Verman, Budha Deo Prasad, Barnali Basak, Satish Kumar, D. S. Chauhan, Ruchi Singh, Prashant Kumar, Shikher Badial, Santosh Kumar Baitha

Final Decision : Allowed

Judgement

Aravind Kumar, J

1. Leave granted.

2. The broad issue at hand relates to recruitment and appointment to the posts in the Haryana Civil Service (Executive Branch [Hereinafter referred to as

'Service']. The process of recruitment to the posts in the Service are governed by Haryana Civil Service (Executive Branch) Rules, 2008 [for short, 'the Rules'].

3. Part II [Part II runs from Rule 3 to Rule 34.] of the Rules is titled 'Recruitment to Service'. For a person to be appointed in the Service, Rule 7 requires that such person's name must be found in 'one or other of the registers of Accepted Candidates to be maintained under these rules. Rule 8 requires the Chief Secretary to maintain 'Registers of Accepted Candidates'. From among the various Registers to be maintained, what is of relevance to us for adjudicating this dispute is the one found in Rule 8 (a): 'Register A-I of District Revenue Officer/Tehsildars accepted as candidates;'

Rule 7 - Members of the Service shall be appointed from time to time as required from amongst accepted candidates whose names have been duly entered in accordance with these rules in one or other of the registers of Accepted Candidates to be maintained under these rules:

Provided that if in the opinion of the Government the exigencies of the Service so require, the Government may make special recruitment to the Service by such methods as it may by notification specify, after consultation with the Commission.

Rule 8- The following Registers of Accepted Candidates shall be maintained by the Chief Secretary, namely:-

- (a) Register A-I of District Revenue Officers/Tahsildars accepted as candidates;
- (b) Register A-II of members of Group C Service accepted as candidates;
- (c) Register B of Persons accepted as candidates as a result of a competitive examination for the post of the Haryana Civil Services (Executive Branch) ; and
- (d) Register C of District Development and Panchayat Officer/Block Development and Panchayat Officers.

4. Rule 9 deals with the selection of candidates for inclusion of their names in Register A-1. According to this Rule, the Financial Commissioner and Principal Secretary to Government (hereinafter referred as, the Commissioner) is required to prepare a list of District Revenue Officer/Tehsildars not more than five times the number of vacancies and submit this list to the Committee [Rule 9 of 2008 Rules states that the Committee shall comprise of a Chief Secretary as the Chairman and two such other officers as members, as may be nominated by the Government from time to time.] for its consideration. Only such names are to be forwarded to the Commission who satisfy the conditions set out in clauses (a) and (b) of Rule 9. Clause (a) of Rule 9 contains four sub clauses. In that sense, the conditions set out in clauses (a) and (b) of Rule 9 provide the eligibility criteria for selection of candidates in Register A-1. We shall advert to the relevant clauses in due course.

5. Once the names are entered in the Register, Rule 17 provides that the Government of Haryana shall make appointments to the Service from amongst

the candidates whose names are entered in the various registers on a rotational basis.

6. Dinesh Singh (Respondent no. 1) was one among several candidates, who was seeking appointment to the post in the Service. He was appointed in the Department of Revenue and Disaster Management (Appellant no. 3; hereinafter, 'the Department') on 12.08.2008 as a Naib Tehsildar, and at the time of filing the original Writ Petition, was serving in the post of Tehsildar. The Department has found Dinesh Singh, among several others, to be ineligible for selection to Register A-1 on the ground that he did not satisfy the eligibility condition set out in sub clause (iii) of clause (a) of Rule 9. Rule 9 (a)(iii) reads as follows:

"is not facing disciplinary proceedings and against whom action is not being contemplated".

7. According to the Department, Dinesh Singh, though was not facing any disciplinary proceedings, there was action being contemplated against him as on date of consideration, which resulted in him being declared ineligible for selection. However, it is Dinesh Singh's case that he was neither facing disciplinary proceedings, nor was any action being contemplated against him, and therefore, the action of declaring him ineligible was erroneous and being excluded, resulted in same being challenged before the High Court. The Ld. Single Judge dismissed the writ petition filed by Dinesh Singh and other similarly situated persons. On appeal, the High Court has set aside the order of the Ld. Single Judge and directed the State to take steps to consider the case of Dinesh Singh for appointment from Register A-1.

8. Therefore, the crux of the litigation comes down to the question as to whether Dinesh Singh was eligible for selection to be made in Register A-1. In order to determine his eligibility, it will be necessary to identify the relevant cut-off date as on which the eligibility is to be determined.

Submissions of Appellant's Counsel:

9. The Division Bench of the High Court has erred in treating 1.11.2018 as the uniform cut-off date for the purpose of determining eligibility qua all conditions set out under Rule 9 (a) and (b).

10. A literal reading of Rule 9 would make it clear that 01.11.2018 was the cut-off date only in so far as the condition provided in Rule 9 (a)(ii); that date was relevant only to determine if the candidate was within the age limit of fifty years and nothing else; this was, in fact, clarified by the Government through its letter dated 09.07.2019, in which it was made clear that the said date was relevant only for purpose of determining the age-related eligibility criterion; and the other conditions of eligibility were to be tested as on 'date of consideration'.

11. Treating the said date as a uniform cut-off date vis-a-vis all the eligibility conditions set out in Rule 9 would result in an anomaly. This is because a candidate against whom no disciplinary action was contemplated or pending as

on 01.11.2018, but became pending subsequently as on date of consideration, would still remain eligible under the Rules. Such could not have been the intention of the Rule-maker.

12. In this case, the date of consideration is the date on which the Committee had recommended names to the Commission under Rule 9 (2), that is, 30.09.2018 and as on such date, there cannot be any dispute about the fact that disciplinary action, though not same contemplated pending against the Respondent.

Submissions of Respondent's Counsel:

13. Per Contra, it is the Respondent's case that Rule 9 contemplates only one cut-off date. There cannot be separate cut off dates qua the different conditions of eligibility. That Rule 9 contemplated only one uniform cut-off date qua all eligibility conditions is evidenced by notification dated 30.05.2019 in which it had been specified that 'The DRO's/Tehsildars whose names are to be recommended should fulfil the following conditions as on 01.11.2018'. This included condition qua pendency/contemplation of disciplinary proceedings. Therefore, the subsequent clarification [It was clarified therein that 01.11.2018 was the cut-off date in order to determine the age-related criterion while other conditions of eligibility was to be tested as on date of consideration.] brought out by the Government through its letter dated 09.07.2018 amounts to nothing but changing the rules of the game. It is further contended that at the previous stages of the litigation, that is before the Single Judge and Division Bench, it was never the pleaded stance of the State that the date of consideration was 31.08.2019. In fact, there it was contended that 01.11.2018 was the cut-off date qua all eligible conditions.

14. Even if 31.08.2019 is taken as the relevant cut-off date for determining eligibility qua the pendency of disciplinary proceeding, in the facts of the present case, it cannot be said that any disciplinary action was contemplated against the Respondent.

ISSUES FOR CONSIDERATION :

15. In this factual background, the following issues fall for consideration: -

"1. On a reading of Rule 9, letter dated 30.05.2019 and letter dated 09.07.2019, whether 01.11.2018 can be said to be the cut-off period uniformly applicable qua all the eligibility conditions provided in Rule 9(1)(a) and (b) or is such date to be considered as the cut-off date only for the purpose of determining age-related eligibility?

2. If we are to hold that 01.11.2018 was the cut off only for the limited purpose, whether Dinesh Singh satisfied the other eligibility conditions? Most importantly, whether it can be said that there was any disciplinary action pending or contemplated against him as on date of consideration? [The answer to the second question would turn on the official noting dated 05.02.2019 in which a

decision was taken proposing to file a chargesheet against Dinesh Singh – in connection with him having absented himself from some invigilation duty.]

ANALYSIS :

16. Rule 9 of the 2008 Rules, as it originally stood provided as follows:

"9. Selection of candidates for Register A-I:- (1) The Financial Commissioner and Principal Secretary to Government, Haryana Revenue and Disaster Management shall, by a date to be determined by the Government prepare a list of District Revenue Officers/Tehsildars not more than five times of 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 other 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 before the Committee;

(iii) is not facing disciplinary proceedings against whom action is being contemplated and

(iv) is clear from vigilance angle;

(b) is a graduate of a recognized University."

17. Rule 9 came to be amended by notification [Notification No. G.S.R.3/Const./Art.309/2017 dated 16th February 2017] dated 16th February 2017 and the amended Rule read as follows:

"9. Selection of Candidates for Register A-I:-

(1) The Additional Chief Secretary and Financial Commissioner to Government, Haryana, Revenue and Disaster Management shall, by a date to be determined by the Government, prepare a list of District Revenue Officers/Tehsildars not more than five times of 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, the name of a person shall be submitted who-

(a) (i) has completed eight years continuous Government service including service rendered as Naib-Tehsildar;

(ii) has not attained the age of fifty years on the first day of November immediately preceding the date of submission of names by the concerned authority;

(iii) is not facing disciplinary proceedings and against whom action is being

contemplated and

(b) is a graduate of a recognised University.”

18. On 17.04.2017, the Department issued a communication, in which it was stated that the State Government was looking to fill up vacancies (9 vacancies) up to 2016, in the Service from the quota of Register A-1.

The relevant part of this communication is extracted below:

“ It is intimated that State Government has decided to fill up nine vacancies of HCS(Executive Branch) from Register A-I of District Revenue Officer/Tehsildars upto the vacancies of the year 2016 in terms of rule 9 of Haryana Civil Service (Executive Branch) Rules, 2008. The officers should fulfill the following conditions of eligibility as on 01.11.2016:-

(a) (i) has completed eight years continuous Government service including service rendered as Naib-Tehsildar;

(ii) has not attained the age of fifty years;

(iii) is not facing disciplinary proceedings and against whom action is not being contemplated.

(iv) is clear from vigilance angle;

(b) is a graduate from a recognized University.

It is, therefore, requested to bring the same in the notice of all concerned Officers under your control. All the eligible and interested Officers should send their application in this regard along with certified documents regarding education to the Government either directly or through proper channel latest by 24.04.2017. The applications received after 24.04.2017 will not be entertained.”

19. It was clearly indicated therein that officers should fulfill the conditions of eligibility as on 01.11.2016 as prescribed in clause(a)(i) to (iv) therein (referred to supra): -

It was also indicated in the said letter to the following effect: -

“It is, therefore, requested to bring the same in the notice of all concerned Officers under your control. All the eligible and interested Officers should send their application in this regard along with certified documents regarding education to the Government either directly or through proper channel latest by 24.04.2017. The applications received after 24.04.2017 will not be entertained.”

20. It appears that there was no action taken in the direction of filling up vacancies pursuant to communication dated 17.04.2017. Nearly two years later, on 30th May, 2019, a fresh communication was issued from the Chief Secretary's Office requesting the Commissioner to forward 'a list of eligible District Revenue Officers/ Tehsildars not more than five times the number of vacancies as per

rules for the aforesaid recruitment'. The relevant part of this communication is extracted below:

"2. The DROs/Tehsildars whose names are to be recommended should fulfill the following conditions of eligibility as on 01.11.2018:-

(a) (i) has completed eight years continuous Government service. However, the services rendered as Naib Tehsildars shall not be included while determining the eligibility as per interim orders/directions dated 26.04.2017 of Hon'ble High Court of Punjab and Haryana, Chandigarh passed in CWP No. 8502 of 2017- Joginder Sharma and others versus State of Haryana and others.

(ii) has not attained the age of fifty years;

(iii) is not facing disciplinary proceedings and against whom action is not being contemplated; and

(iv) is clear from vigilance angle;

(b) is a graduate from a recognized University."

21. What needs to be noted at the very outset is that the Respondent has not challenged the validity of Rule 9 (1)(a)(iii), which requires, as a matter of eligibility for selection, that no disciplinary proceeding be pending, or action be contemplated against him. This is significant because, normally, in the context of promotion-related disputes, this Court has consistently held [State of M.P. v. Bani Singh, 1990 Supp SCC 738.] that mere pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon his right to be considered. Resort is often taken to the 'sealed cover' procedure in cases where a candidate/employee seeking promotion to a higher grade is facing disciplinary proceedings. As per this procedure, the candidate is allowed to participate in the merit-based selection process, and the results of such candidate's selection is kept in a sealed cover and opened in the event where the disciplinary proceedings are dropped/ or a finding of not guilty is passed.

22. Since the rule disentitling a candidate for selection if disciplinary proceeding is pending or contemplated is not under challenge in these proceedings, we must apply it as it is.

Determination of the cut-off date qua the eligibility condition of pending disciplinary proceedings

23. In order to find an answer as to whether there was any disciplinary proceeding contemplated/pending against Dinesh Singh, we are necessarily required to determine the applicable cut-off date against which the eligibility is to be tested. In that sense, the finding on the latter question has a direct bearing on the outcome of the former question. Perhaps, this also explains why the Ld. Single Judge and Ld. Division Bench have reached opposite conclusions. According to the Ld. Single Judge, 1.11.2018 was to operate as the cut-off period

only in so far as Clause (2) of Rule 9(1)(a) is concerned – that is to say eligibility in so far as age of the candidate is concerned. The date 01.11.2018 was not to be treated as the cut-off date for all the eligibility conditions set out in Rule 9. However, the Division Bench was of the opinion that 01.11.2018 operated as the cut-off date qua all the clauses found in Rule 9(1)(a).

24. If the Division Bench is right in its finding, then we need not enter into the follow-up question as to whether any disciplinary proceeding was pending/contemplated against Dinesh Singh, since, admittedly, as on 1.11.2018, even as per the appellant-State, no case was pending or contemplated against him. On the other hand, if we hold the cut-off date to be the date of consideration, then it needs to be further examined if there was any action contemplated against the Respondent as on that date.

25. We are of the view that Ld. Single Judge was correct in concluding that 01.11.2018 was meant only for the purpose of determining the age-related eligibility as provided for in Rule 9(1)(a)(ii). The cut off for the purpose of determining eligibility in so far as Rule 9(1)(a)(iii) has to be determined as on date of consideration.

26. The finding of the Division Bench to the contrary was on the premise that the subject rule in itself had provided for 01.11.2018 to operate as the cut-off date qua all conditions of eligibility found in Rule 9. The relevant observation of the High Court is extracted herein below –

“the cut-off date, thus, has to be seen from the date which is provided in the rules, which would be 01.11.2018 as per Rule 9(1)(a)(iii) of the 2008 Rules, as the process was set into motion on 30.05.2019. It is, thus, does not lie in the mouth of the State as such to say that on account of the pending litigation and on account of the orders of the Division Bench dated 21.08.2019 and 29.08.2019, a different cut-off date would come into play and there was a distinction as such qua the names which had been sent later. The eligibility as such has to be seen as provided in the rule itself and finding of the learned Single Judge that the cut-off date is 12.07.2019 is based on a wrong presumption.”

27. As could be seen from the above, the Ld. Division Bench opines that the cut-off date has to be seen from the date provided in the Rules, which according to it, is 01.11.2018. Rule 9(1)(a)(iii) does not contain any such date; it merely provides that a candidate facing disciplinary proceedings or against whom action is contemplated becomes ineligible for selection. Only clause (2) in Rule 9(1)(a) finds the mention of a date (1st day of November immediately preceding the date of submission of names by the concerned authority) as such. Therefore, the finding that the rule itself clearly provides for a cut-off date qua all the clauses in Rule 9(1)(a) appears to be perverse and without any basis. The Ld. Single Judge has rightly relied on the letter date 09.07.2019 in arriving at the conclusion that 01.11.2018 was the cut-off date only for a limited purpose. That limited purpose

can be understood if one were to read the clarification provided for in the said letter. The clarification is extracted herein below for easy reference: -

"2. The State Government has re-considered the matter and it has been decided that the DROs/Tehsildars whose names are to be recommended should fulfil the following conditions of eligibility:-

(a) (i) has completed eight years continuous Government Service.

(ii) has not attained the age of fifty years as on 01.11.2018.

(iii) is not facing disciplinary proceedings and against whom action is not being contemplated; and

(iv) is clear from vigilance angle;

(b) is a graduate from a recognised University.

It is clarified for the condition (a) (i) that services rendered as Naib Tehsildars shall not to be included while determining the eligibility as per interim orders/directions dated 26.04.2017 of Hon'ble High Court of Punjab and Haryana Chandigarh passed in CWP No. 8502 of 2017- Joginder Sharma and others versus State of Haryana and others.

It is further clarified that DROs/Tehsildars, who are otherwise eligible being less than 50 years of age on and after 01.11.2018, their ACRs be considered upto year 2018-2019 and experience be taken into consideration upto the date of recommendation. The DROs/Tehsildars, who had not attained the age of 50 years as on 01.11.2018 but attained the age of more than 50 years on and after 01.11.2018 till the date of recommendation their experience and ACRs record be considered only upto 01.11.2018. However, pending disciplinary proceedings, vigilance clearance and integrity be considered upto the date of consideration in both cases."

28. From this clarificatory note, it becomes clear that if a candidate was less than 50 years of age as on 01.11.2018 and continued to be so till the date of recommendation, then his ACR and experience was to be counted till the date of recommendation. However, if the candidate was less than fifty years as on 01.11.2018 but exceeded such age as on the date of recommendation, such candidates ACR and experience was to be accounted for only till 01.11.2018. In that sense, the cut-off date (01.11.2018) was relevant only to decide the question of how much of the ACR and experience had to be considered and till what period. Such date was never meant to operate as the date against which all the eligibility criteria had to be measured against. This fact stands clarified from the last paragraph of the letter dated 09.07.2019, whereunder it has been stated that the eligibility criteria concerning 'pending disciplinary proceedings, vigilance clearance and integrity' was to be considered up to the date of consideration in both cases. This aside, according to us fixing 01.11.2018 as the cut-off date for determining eligibility qua all conditions can bring about undesirable outcomes.

For example, if a candidate had a clean service record, had completed 8 years continuous government service, had no disciplinary proceedings pending or contemplated against him, was clear from the vigilance angle but in between 01.11.2018 and the date of consideration if he were to be facing disciplinary action concerning serious misconduct, such a candidate would remain eligible for selection. It is in this background the communication dated 9th July, 2019 has to be read and understood.

29. The Respondent had relied on letter dated 30.05.2019 to contend that 01.11.2018 was to operate as a cut-off date qua all eligibility conditions. In order to deal with this submission, we may have to refer to the contents of the letter dated 30.05.2019 and the letter dated 09.07.2019.

30. The State Government vide letter dated 30.05.2019 showed interest in filling up the 23 vacancies of HCS(EB) and in this regard informed the Additional Chief Secretary and Financial Commissioner, requesting him to send a list of eligible candidates as contemplated under Rule 9 Paragraph 2 of this letter stated that the DROs/Tehsildars whose names are to be recommended should fulfil the eligibility conditions provided for in Rule 9 as on 01.11.2018. What is interesting to note here is that the cut-off date has not been confined to apply only to the eligibility criteria pertaining to the age but to all the four criteria uniformly. This letter was followed up by another letter dated 09.07.2019, in which the State Government appears to have reconsidered the matter. According to this letter, the names had to be recommended as per the conditions of eligibility found in the amended Rule 9(1)(a) and (b). It was requested therein that the recommended names be sent to the Committee by 12.07.2019. What we notice here is that the uniform application of the cut-off qua all eligibility conditions was deleted and the cut-off was restricted to the condition relating to the age of the candidate. Thus, the Respondent cannot take umbrage under the contents of letter dated 30.05.2019, when it had been followed up with another letter on the same subject and with specific clarification regarding the scope and relevance of the date 01.11.2018.

31. Therefore, it cannot be held that Rule 9 contemplated a uniform cut-off date qua all the conditions of eligibility. 01.11.2018 was relevant only in so far as Rule 9(1)(a)(ii) was considered. For the purpose of Rule 9(1)(a)(iii), the relevant date for determining if there was any disciplinary action contemplated or pending against a candidate "is the date of consideration," which is the date on which the Committee had recommended names to the Commission under Rule 9(2), which, in the facts of this case would be 31.08.2019.

Whether disciplinary proceedings were 'contemplated' against Mr. Dinesh Singh as on date of consideration, that is, 31.08.2019

32. What does the word 'contemplate' entail in the context of Rule 9(1) (a)(iii)? Said rule provides for two conditions, both of which have to be satisfied since the two conditions are separated by the conjunction 'and' instead of 'or'. To put it

differently, what Rule 9 (1)(a)(iii) mandates is that not only there must be no pending disciplinary proceeding but there must also not be any action contemplated against the candidate as on date of consideration.

33. It is now trite that a disciplinary proceeding is said to be pending when a formal charge-sheet is issued to the employee. [Union of India Vs. KV Janakiraman (1991) 4 SCC 109] The stage at which action can be contemplated has to, quite obviously, come before the time at which a disciplinary proceeding becomes pending (i.e. at the time of issuing a formal chargesheet). At what point between the employer having received information/knowledge of an alleged misconduct committed by the employee and the ultimate initiation of disciplinary proceedings by issuing chargesheet, can it be said that disciplinary proceedings are contemplated? The entire challenge before us is to find that point.

34. The word contemplate has different meanings in the English Dictionary. It can mean 'to think deeply at length'; 'to have in view as a probable intention'; to think about. According to us, the second meaning comes closest to the sense in which the rule-maker intended the rule to operate. Probability is a step ahead of possibility but falls short of certainty. With this basic logic in mind, we can glance through some of the rulings which have interpreted the word 'contemplate' in similar contexts.

Meaning of the term "Contemplation" :

35. In H.Surendra Shetty v. Vijaya Bank, MG Road Bangalore & Ors., ILR 2000 Kar 2883 wherein the disciplinary proceedings were initiated against the petitioner with respect to certain irregularities. The Karnataka High Court explained the meaning "contemplation" and made the following observations:

"20. The meaning given in Black's Law Dictionary, 5th edition (1979) for the word 'contemplation' is as follows: "The act of the mind in considering with attention. Continued attention of the mind to a particular subject. Consideration of an act or series of acts with the intention of doing or adopting them. The consideration of an event or state of facts with the expectation that it will transpire". Thus, contemplation is a process that goes on in the mind and falls far short of a 'decision' which refers to the culmination of the process of contemplation in arriving at a definite conclusion as to the next course of action to be taken under a set of facts with the intention of carrying out a certain act. Thus, mere contemplation cannot serve as the basis for adopting the sealed cover procedure as it does not answer to the tests adopted in the decisions relied upon by learned Counsel Ramadass to justify the adoption of the sealed cover procedure."

21. ...If the petitioner is denied promotion merely on the basis that a charge-sheet is contemplated or some investigation is ordered by the bank, it would amount to interfering with or denying a right to which the petitioner was rightfully entitled to which is per se improper and opposed to principles of natural justice. No man can be denied his due without even letting him have an inkling

as to why he is being denied it.”

36. In Govt. of India Ministry of Home Affairs & ors. v. Tarak Nath Ghosh 1971 AIR SC 823 this Court while dealing with the disciplinary proceedings initiated against the respondent, an IPS officer, made the following remarks:

“13. In substance, disciplinary proceedings can be said to be started against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Govt. that a prima facie case has been made out against him for the framing of charges. When the order of suspension itself shows that the Govt. was of the view that such a prima facie case for departmental proceedings had been made out the fact that the order also mentions that such proceedings were contemplated makes no difference. Again, the fact that in other rules of service an order of suspension may be made when ‘disciplinary proceedings were contemplated’ should not lead us to take the view that a member of an All-India Service should be dealt with differently.”

37. Similarly, in P.R. Nayak v. Union of India, (1972) 1 SCC 332 this Court had the opportunity to consider the meaning of contemplation of disciplinary proceedings under the All-India Services (Discipline and Appeal) Rules, 1969 and while doing so, this Court made the following observations:

“69. ...Rule 3 of the All-India Services (Discipline and Appeal) Rules, 1969, which has already been set out in extenso, provides for suspension during disciplinary proceedings. Sub-rule (1) of this rule on its plain reading... does not suggest that suspension can be ordered merely when disciplinary proceedings are contemplated. The language used in sub-rules (4) to (7) also suggests that these rules do not authorise order of suspension of the delinquent member of the Service merely because disciplinary proceedings against him are contemplated. Suspension under those sub-rules may be ordered only either after conviction [deeming provision under sub-rule (4)] or when criminal proceedings are actually in progress [sub-rule (5)] or when after the penalty imposed on him having been set aside, the disciplinary authority decides to hold further enquiry [deeming provision under sub-rule (6)]... The legislative scheme underlying Rule 3 is thus clearly indicative of the intention of the rule-making authority to restrict its operation only to those cases in which the Government concerned is possessed of sufficient material whether after preliminary investigation or otherwise and the disciplinary proceedings have in fact commenced and not merely when they are contemplated. An order of suspension before the actual initiation or commencement of disciplinary proceedings appears to us therefore, to be clearly outside the ambit of Rule 3 and we find no cogent ground for straining the plain language of Rule 3(1) so as to extend it to cases in which disciplinary proceedings are merely contemplated and not actually initiated or commenced. It is no doubt true that this Court (G.K. Mitter and A.N. Ray, JJ.) has in Government of India, Ministry of Home Affairs v. Tarak Nath Ghosh, [(1971) 1 SCC 734 : AIR 1971 SC 823] ‘expressed the view that under Rule 7(1) of the All India Services

(Discipline and Appeal) Rules, 1955 [replaced in 1969 by Rule 3(1) with which we are concerned] the Government is entitled to place an officer under suspension even before definite charges are communicated to him when preliminary investigation has been made into his conduct following allegations of corrupt or malpractice levelled against him. In support of this view, reliance in that decision was placed on *S. Govinda Menon v. Union of India*, [(1967) 2 SCR 566 : AIR 1967 SC 1274] 'an earlier decision by a bench of two Judges.'

38. In *Kul Bhusan Chopra v. Punjab National Bank and Ors.* (1979) IILLJ 86 Del the Delhi High Court while considering the suspension of the petitioner under Clause 12 of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulation 1977 elucidated the meaning of the term contemplation as follows:

"11. When can the disciplinary proceedings be said to be "contemplated" must then be determined. Can an officer be suspended merely during the investigation by the Bank or during the pendency of some sort of a preliminary or confidential enquiry by it and must the suspension be resorted to, if at all, only after a formal charge or accusation has been made against an officer? What does the expression "contemplated" connote? Does it merely mean that proceedings are likely in the foreseeable future or are imminent in the near future or are about to be initiated. These are some of the questions that were posed in the course of arguments. The expression "contemplated" is not defined in the Regulations. According to the dictionary meaning, the word "contemplate" would mean to have in view, to expect, to take into account as contingency, to propose. In the case of *P.R. Nayak*, (5) the difference between "contemplation" and "initiation" was brought out. The relevant rule in that case empowered the authority to suspend where the proceedings had been initiated. The order of suspension was, however, made before the initiation of proceedings on the ground that the same were "contemplated". It was held that the rules did not authorise suspension "merely because disciplinary proceedings against him are contemplated". In the case of *State of U.P. v. Jai Singh Dixit*, (6) a Full Bench of the Allahabad High Court was concerned with Rule 49A of the U.P. Civil Services (Classification, Control and Appeal) Rules which empowered the authority to suspend a Government servant "against whose conduct an enquiry is contemplated or is proceeding" which is in *pari materia* with the Regulation in the present case. According to the Allahabad High Court, the proper meaning which could be assigned to the word "contemplated" in the context of the aforesaid rule was when it was in the mind of the appointing authority that in due course a formal departmental enquiry shall be held or there existed a contingency for such an enquiry. It was observed that a departmental enquiry could be said to be contemplated when on objective consideration of the material, the appointing authority considered the case as one which would lead to a departmental enquiry irrespective of whether any preliminary enquiry summary or detailed, had or had not been made or if made is not completed, and that there could be suspension pending enquiry even before a final decision was taken to initiate the disciplinary proceedings i.e. even before the framing of the charge and the communication

thereof to the Government servant.”

39. In *State Of U.P v. Jai Singh Dixit and Others* (1976) ILLJ 246 All the Allahabad High Court made the following observations regarding the contemplation of inquiry while considering the suspension of the respondent under Rule 49-A of the Uttar Pradesh Civil Services (Classification, Control and Appeal) Rules:

“35. The inquiry contemplated by Rule 49-A cannot have reference to an informal preliminary inquiry or a fact-finding inquiry preceding the actual disciplinary proceeding, otherwise it shall be permissible to, suspend a Government servant pending such informal inquiry, but not after charges have been framed and regular departmental proceeding is pending. This shall lead to an anomalous situation. We are, therefore, of opinion that the “inquiry” contemplated by Rules 49-A and 1-A has reference to the formal departmental inquiry, and not to any informal preliminary or fact-finding inquiry preceding the initiation of the formal disciplinary proceeding.

39. The meaning of the word “contemplate” has been given in Shorter Oxford English Dictionary, Volume I, as:

“1. To look at the continued attention, gaze upon, observe. Behold. 2. To view mentally; to meditate upon, ponder, study. 3. To consider in a certain aspect, regard. 4. To have in view; to expect, take into account as a contingency; to purpose”

and in the New International Dictionary, Volume I, as:

“1. To view with sustained attention: give attention fully for a noticeable time: observe with ostensibly steady reflection.

2. to view mentally with continued thoughtfulness, attention, or reflection: muse or ponder about. 3. to view mentally in a stated or implied way with thoughtfulness and reflection: A. to think about or regard from a certain viewpoint or in a certain light or respect, b: to have in view as a purpose: anticipate doing or performing: plan on: INTEND, PLAN e. to dream of as a Cherished Aim: ENVISION—d: to presume or imply as a concomitant or result: POSTULATE, PRESUMPTION— d: to presume or imply as a concomitant or result: POSTULATE, PRESUPPOSE 4: to view or regard (as an object or an objective fact) with detachment.”

40. The proper meaning which can be assigned to the word “contemplate” used in Rule 49-A or in Rule 1-A, therefore, is to have in view, ‘to expect’, ‘take into account as a contingency’. Therefore, whenever it is in the mind of the appointing authority that in due course a formal departmental inquiry shall be held or there exists a contingency for such an inquiry, one can say that a formal departmental inquiry is contemplated. It is, however, necessary that there should be application of mind, in the eye of law, in good faith, and not arbitrarily.

41. A formal departmental inquiry is invariably preceded by an informal preliminary inquiry which itself can be in two phases. There can be a summary investigation to find out if the allegations made against the Government servant have any substance. Such investigation or inquiry is followed by a detailed preliminary or fact-finding inquiry whereafter final decision is taken whether to initiate disciplinary proceeding.

The first preliminary inquiry may be in the shape of secret inquiry and the other, of an open inquiry. In the alternative, when complaints containing serious allegations against a government servant are received, the authority may peruse the records to satisfy itself if a more detailed preliminary inquiry be made."

40. The Gujarat High Court in *Santi Kumar Ganguly v. The State of Tripura and Ors.* (1982 GLR 1 21) while dealing with the suspension of petitioner under the Central Civil Services (Classification-(SIC) Control and Appeal) Rules, 1965 held that:

"7. The dictionary meaning of the word 'contemplate' leads to conclude that whenever it is in the mind of the appointing authority that a formal disciplinary proceeding shall be or there exists a contingency for such a proceeding, one can say that a formal disciplinary proceeding is contemplated. To contemplate in the context is to have in view to expect, or take into account as a contingency. A disciplinary proceeding is contemplated when on an objective consideration of the materials, the appointing authority considers the case as one which might lead to a formal disciplinary proceeding. The formation of such an opinion may be, on the basis of inspection of the records, though further investigation in some cases may be considered necessary to collect more materials for formal disciplinary proceeding, The Disciplinary Authority at that early stage can have in view of a contingency for disciplinary proceeding and suspend the Government servant, in exercise of its power under Rule 10(l) (a) of the said Rules."

41. In *Champaklal Chimanlal Shah vs The Union of India* 1964 AIR SC 1854=1964 SCR (6) 190 this Court while considering the action taken against the petitioner who claimed to be a quasi permanent employee under the Central Civil Services (Temporary Services) Rules, 1949 made the following remarks:

"16. ...The circumstances in this case are in our opinion very similar to the facts in *Shayamlal* case the difference being that in that case he was compulsorily retired and in this case the appellant's services have been terminated. In *Shayamlal* case also at one stage, the government made imputation against his conduct but later withdrew them and did not follow up the matter by holding a departmental enquiry. This is exactly what happened in the present case and it was more than six months after that the appellant who had in the meantime been transferred to Bombay was discharged in the terms of Rule 5 because his work and conduct were found unsatisfactory. The order terminating his services makes no imputation whatsoever against him and in the circumstances it cannot be said that the termination of his service is visited with any evil consequences

as explained in Parshotam Lal Dhingra case. We are therefore of opinion that on the facts of this case Article 311(2) has no application and the appellant was not entitled to the protection of that Article before his services were terminated under Rule 5, for the termination of service here does not amount to infliction of the penalty of dismissal or removal."

42. In *S. Govinda Menon v. Union of India* 1967 AIR SC 1274= 1967 SCR (2) 566 this Court while dealing with the suspension of appellant under Rule 7 of the All-India Services (Discipline & Appeal) Rules, 1955 made the following observations:

"14. ...Rule 5(2) prescribes that the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges. Under Rule 5(3) a member of the Service is required to submit a written statement of his defence to the charge or charges. The framing of the charge under Rule 5(2) is necessary to enable the member of Service to meet the case against him. The language of Rule 7(1) is however different and that rule provides that the Government may place a member of the Service under suspension "having regard to the nature of the charge/charges and the circumstances in any case" if the Government is satisfied that it is necessary to place him under suspension. In view of the difference of language in Rule 5(2) and Rule 7 we are of the opinion that the word "charges" in Rule 7(1) should be given a wider meaning as denoting the accusations or imputations against the member of the Service."

43. The Allahabad High Court in the case of *Shahroj Anwar Khan v. State of U.P.*, 2007 SCC OnLine All 389 while dealing with the question whether Rule 17(1)(a) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 prohibits passing of a suspension order during the pendency of preliminary enquiry considered the meaning of the term contemplation as follows:

"16. ...The term 'contemplation' is quite a wide term. Webster Comprehensive Dictionary, amongst other defines 'contemplation' as a deliberation on something to be done. The Oxford Dictionary gives four different shades of meaning of the verb 'to contemplate'. They are as follows: —(1) to survey with the eyes, or in mind, (2) to regard an event as possible, (3) to intend, to have as one's purpose, and (4) to meditate. When a disciplinary authority contemplates holding of an inquiry, it may take variety of steps, which may include collecting material for finding out the nature and details of the allegations. For that purpose, a preliminary inquiry can certainly be held, but as the rule stands, can it be read to mean that an officer cannot be suspended before a preliminary inquiry. It is also to be noted that a preliminary inquiry and the full-fledged departmental inquiry are not to be confused with each other as observed in the case of *Amalendu Ghosh* (supra).

29. In view of what is stated above, it is clear that the phrase 'when an inquiry is contemplated' will have to be read as meaning that an inquiry is under consideration or is thought of or is proposed. It cannot mean that a decision to

hold an inquiry is arrived at. After that decision is arrived at, undoubtedly, a full-fledged departmental inquiry follows. Therefore, the phrase 'an inquiry is contemplated' will cover an earlier stage. It will certainly cover a stage when even a preliminary inquiry is under consideration. A preliminary inquiry cannot be excluded from the term 'inquiry' as covered under this clause. That would place a fetter on the powers of the administration. As noted earlier, the authority may be confronted with various situations and they ought to have the freedom to deal with those situations. It will be for them to decide what steps they ought to take. The authorities may, undoubtedly, initiate a preliminary inquiry, or may even be required to resort to suspension while initiating a preliminary investigation. It cannot be said that the authorities will hold the preliminary investigation or inquiry for quite some time, allow the officer."

44. In *Rajendra Shenkar Nigam v. State of U.P.*, 1973 SCC OnLine All 381 the Allahabad High Court while dealing with the suspension of the respondent for allegation of corruption observed the meaning of contemplation as follows:

14. The material and relevant expression in Rule 49-A is an inquiry is contemplated or is proceeding. The term "contemplated" is not a term of art. It has been used in its plain ordinary meaning. The Shorter Oxford Dictionary, Volume I at page 380 defines the word 'contemplated' to mean "to have in view, to expect, to take into account as a contingency". It indicates a stage where an inquiry into the conduct of a government servant is imminently expected with a view to impose some punishment upon him. On receipt of complaints against the conduct of a government servant the competent authority sets in motion an informal inquiry to certify the correctness of the allegations or to collect material with a view to hold a disciplinary inquiry so that if the alleged misconduct is established suitable punishment be awarded. The inquiry which will result in imposition of punishment can be said to be expected or contemplated. When the Government sets in motion its machinery for investigating the alleged complaints so that it may hold a formal inquiry more properly the formal inquiry is clearly contemplated, and the power to suspend comes into play. In *S.C. Kharbdanda v. State of U.P.*, a Division Bench observed:— "The mere fact that a preliminary enquiry has been admittedly instituted is proof positive of the fact that the departmental enquiry is contemplated. Were, it otherwise, the authorities would decline to undertake the preliminary enquiry."

45. In *Dr. Subash Chand v. State of U.P.*, 2005 SCC OnLine All 1712 the Allahabad High Court while considering the suspension of the Veterinary officer in Animal Husbandry Department of the State Government following a government order explained the meaning of the term contemplation of Inquiry as follows:

"13. ...So far as the meaning of phrase "against whose conduct an inquiry is contemplated" is concerned, the full Bench observed that against whose conduct an inquiry is expected or to be initiated under Rule-55 of the C.C.A. Rules. That will be when a decision has been taken on the basis of material collected on preliminary investigation and the Appointing Authority is prima facie satisfied

that they have substance to justify either of the major punishments and initiation of formal proceeding would be justified. At any point of time prior to taking of such a decision it could not be said that an inquiry under Rule-55 was contemplated. This stage would not be Cached unless the appointing authority decides in circumstances of the case that it will proceed to hold an inquiry under Rule-55. It is framing of charge or charges and their communication to the charged government servant, virtually initiates the formal departmental proceeding.

14...In as much under Clause (1) of Rule 49-A, the power of suspension can be exercised only when decision has been taken to start an inquiry under Rule-55 which can be done only when on preliminary investigation, such material has been collected which have substance to justify the formal departmental proceeding and it is expected that on evidence brought before inquiry officer, such misconduct on the part of government servant will be established, which in normal course would justify either of the major penalties viz. dismissal, removal or reduction in rank, suspension is resorted to". The court further held that the expression "as a rule" occurring in the beginning of the note implies that that is always the rule to be observed.

38. Thus, we are of considered opinion that there can be no scope for doubt to hold that on receipt of such complaint containing allegations against government servant, the appointing authority has to be satisfied about the allegations contained therein and further such allegations have any substance enabling to hold formal disciplinary inquiry against the government servant for imposition of major penalty against him. Before such satisfaction is arrived at with regard to such allegations, it is not open for the appointing authority to place a government servant under suspension. In this connection it is necessary to make it clear that such satisfaction need not be in shape of a final and firm decision, otherwise the "inquiry" instead of being "expected" or "as contingency", it would be sure and certain, which could not be said to be intention of rule-making authority while employing the phrase "an inquiry is contemplated."

46. In State of U.P. v. Jawahar Lal Bhargava, 1974 SCC OnLine All 45 the Allahabad High Court while considering suspension order of a Judicial officer presumably under Rule 49A of the U.P. Civil Services (Classification, control and Appeal) Rules considered the meaning of the term "Inquiry" and "contemplation" as follows:

"13. ...Thus the word 'inquiry' means nothing hut the formal disciplinary proceeding and not the investigation of an informal character which must often precedes the initiation of formal disciplinary proceeding envisaged by Rule 55. When the appointing authority takes a decision to start formal proceedings, then within 15 days of taking that decision charge or charges should be handed over to the charged officer. Thus there is a time lag of 15 days permitted between taking the decision to start formal proceedings and the service of charges on the charged officer. The direction given by the Governor envisages that at the time

when a decision is taken by the appointing authority to start formal proceedings it must also simultaneously decide whether the Officer should be placed under suspension pending the inquiry. It is at this stage that it can be said that an inquiry is contemplated against the conduct of the Government servant. The only meaning that can be given to the phrase 'against whose conduct an inquiry is contemplated', occurring in Clause (I) of Rule 49-A, would be against whose conduct an inquiry under Rule 55 is to be initiated." This will be when a decision has been taken on the basis of the material collected on preliminary investigation and the appointing authority is prima facie satisfied that they have substance and the starting of formal proceedings would be justified. At any point of time prior to the taking of such a decision it could not be said that an inquiry under Rule 55 was contemplated.

14. Though the verb 'contemplate' has many meanings and has somewhat an ambiguous import, yet it has to be given a definite meaning in the context in which it has been used in harmony with the scheme laid down in the Civil Services (Classification, Control and Appeal) Rules pertaining to conduct and discipline of the Government servant who fall within the rule making power of the Governor under Article 309 of the Constitution. With great respect the meaning given by Seth, J. in *Rajendra Shanker Nigam v. State of U.P.* appears to be correct, that is to have in view an inquiry under Rule 55 or to hold an inquiry under Rule 55. This stage would not be reached unless the appointing authority decides in the circumstances of the case that it will proceed to hold an inquiry under Rule 55. Mewad in this light and the directions of the Governor as given in para 2 of the Appendix IV, quoted above, the substance of which is contained in the Note, the phrase 'suspension, where deemed necessary should, as far as possible immediately precede the framing of charges and their communication to the Government servant charged occurring in the Note will mean where it is decided to suspend a Government servant pending an formal inquiry under Rule 55 the order of suspension as far as possible be passed immediately preceding the framing of the charges and their communication...The Note does not permit the appointing authority to suspend a Government servant before it decides to initiate a formal inquiry under Rule 55 against the Government servant. The Note fixes the earliest point of time for the exercise of the power of suspension. The phrase as far as possible' cannot be construed as leaving a power with the appointing authority to suspend a Government servant at a point of time earlier than the earliest point of time fixed by the Note."

47. The reason for declaring the Respondent (Dinesh Singh) ineligible for selection as per Rule 9 was on the ground that 'decision has been taken on file to charge sheet him under Rule 7' [Rule 7 of Haryana Civil Services (Punishment and Appeal) Rules, 2016]. At no point has it been asserted by Dinesh Singh (Respondent no. 4) that disciplinary proceedings were not contemplated against him. His entire case from the very beginning has been that the cut-off date qua all eligibility conditions must be determined as on 01.11.2018 and since there was no decision/contemplation to initiate any disciplinary proceedings as of that

date, he ought to have been recommended for appointment. In fact, in the Counter-Affidavit submitted on his behalf, there is an implicit admission that a decision to initiate disciplinary action against him (Dinesh Singh) was taken on 09.01.2019.

48. We have already noted above that the relevant cut-off date qua Rule 9 (1)(a) (iii) is 31.08.2019 and therefore, it was not necessary for us to decide anything further. However, we have surveyed the relevant authorities dealing with the meaning of 'contemplation' only to satisfy ourselves that there was, in fact, a contemplation to initiate disciplinary proceedings as per law.

49. The main allegation against Respondent No.1 is that on 05.01.2019 and 06.01.2019, he was directed to act as Duty Magistrate during the Haryana Teacher's Eligibility Test, 2018 and he remained absent from this duty and as such he was negligent in performing his official duties. The Deputy Commissioner, Kurukshetra wrote a letter dated 9.01.2019 to the Additional Chief Secretary and Finance Commissioner, Government of Haryana, Department of Revenue and Disaster Management in this regard and recommended that formal inquiry be initiated against the Respondent. In view of this communication, a decision was taken on 05.02.2019 to charge-sheet Respondent No. 1. It is not relevant for us to consider what happened beyond the date of consideration, that is, 31.08.2019. However, it may be recorded here that subsequent to this date, there was a charge-sheet issued against the Respondent and ultimately, the entire proceedings came to be dropped on 11.12.2019. Since the eligibility conditions in Rule 9 (1)(a)(iii), the validity of which is not under challenge before us, requires us to limit our inquiry into the question of eligibility as on date of consideration, what happens after that becomes insignificant to the inquiry.

50. In the background of the above facts and position of law analysed hereinabove, it has to be concluded that as on the date of consideration, disciplinary action was contemplated against the writ petitioner Dinesh Singh, and therefore he was rightly held to be ineligible for selection of his name in Register A-1.

51. Accordingly, this appeal is allowed. The impugned order of the Division Bench of the High Court of Punjab and Haryana is set aside and order of the Ld. Single Judge dated 23.04.2021 is affirmed subject to observations made hereinabove.

Costs made easy.