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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.948/2004

New Delhi, this the ~~2~~^{# 2nd} day of March, , 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

Mrs. Asha Nayar
B-9, Dr. Zakir Hussain Marg
New Delhi – 110 011.

... Applicant

(By Advocate: Sh. C. Hari Shankar)

Versus

1. Union of India
Through The,Secretary
Ministry of Home Affairs
Government of India
North Block
New Delhi – 110 001.
2. The Govt. of NCT of Delhi
Through Chief Secretary
Player's Building, I.P.Estate
New Delhi. .. Respondents

(By Advocate: Ms. Jyoti Singh)



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O R D E R

By Mr. Justice V.S. Aggarwal:

Applicant, by virtue of the present application, seeks setting aside of the order whereby she has been denied the grant of Super Time Scale. She also prays for a direction to the respondents to grant her the Super Time Scale from the date her immediate junior, Shri Jaiprakash, has been accorded the Super Time Scale.

2. The facts, which are not in dispute, can conveniently be delineated. Under the Indian Administrative Services (Pay) Rules, 1954, promotion to the Super Time Scale of the Indian Administrative Service has to be made '**by selection on merit with due regard to seniority**'. The applicant was appointed as Grade-I Officer to the Junior Administrative Grade in 1993. She was placed on probation and was allocated the joint cadre of Arunachal Pradesh-Goa-Mizoram-Union Territories (Delhi) under Sub-Rule (1) of Rule 5 of the Indian Administrative Service (cadre) Rules, 1954. She was confirmed in the Indian Administrative



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Service from 21.2.1996. The applicant was promoted to the selection grade of the IAS from 1.1.2000. By virtue of the said promotion, she became entitled, on completion of 16 years of service, to be awarded the Super Time Scale of the Indian Administrative Service (for short 'IAS').

3. The grievance, as referred to above, is that vide the impugned order the applicant has been denied the selection in the Super Time Scale of IAS. It is contended that the said decision is arbitrary. Hence, the present application has been filed.

4. In the reply filed, the application is being contested. Respondents plead that the applicant is a member of the AGMUT cadre of IAS of 1987 batch. It is not disputed that appointment to selection grade is made by **selection on merit with due regard to seniority**. The instructions of the Government of India, dated 28.3.2000 in this regard have been issued. It has been provided in these instructions that each Committee shall decide its own method and procedure for objective assessment of the suitability of



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the candidates and that advancement in an officer's career is not required to be regarded as a matter of course but it has to be earned by dint of hard work, good conduct and result oriented performance as reflected in the Annual Confidential Report of the officer. A high-power Screening Committee had considered the claim. The applicant was found **unfit** for the purpose. There is nothing illegal in this regard and, therefore, according to the respondents, the application is without merit.

5. The legal position on the subject is not much in controversy. The **Supreme Court** in the case of **NUTAN ARVIND (SMT.) v. UNION OF INDIA AND ANOTHER**, (1996) 2 SCC 488 has dealt with this question and concluded that when a high-level Committee had considered the respective merits of the candidates, assessed the gradings, there is little scope for judicial interference/review. The findings read:

"6. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit

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over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference."

6. So far as recording of the Annual Confidential Reports is concerned, the **Supreme Court**, in the case of **STATE BANK OF INDIA AND OTHERS v. KASHINATH KHER AND OTHERS**, (1996) 8 SCC 762, has further held that the object of writing the Annual Confidential Reports is to give an opportunity to the officer to remove deficiencies and to inculcate discipline. It further seeks to serve improvement of quality and excellence and efficiency of public service. The findings in this regard of the Supreme Court are:

"15. The object of writing the confidential report is twofold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in *Delhi*

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Transport Corp. V. D.T.C. Mazdoor Congress, 1991 Supp(1) SCC 600 pointed out the pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralized which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by a superior officer of high rank. Who are such high rank officers is for the appellant to decide. The appellants have to prescribe the officer competent to write the confidentials.

7. It has further been concluded by the **Supreme Court**, in the case of **MAJOR GENERAL I.P.S. DEWAN v. UNION OF INDIA AND OTHERS**, 1995 SCC (L&S) 691 that in the absence of provision to the contrary, the Selection Committee is not obliged to record reasons for its decision to select or not to select a particular person in the matters of selection. The speaking orders necessarily need not be passed.

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8. From the aforesaid, the following conclusions can be drawn:

- a) In judicial review, the scope is limited. This Tribunal will not substitute the decision into that of the views of the Selection Committee unless it is arbitrary, illegal or without basis; and
- b) Reasons ordinarily need not necessarily have to be given by the Selection Committee.

9. As already referred to above, it has not been disputed at either end that to earn Super Time Scale under the Rules, selection is on merit with due regard to seniority. It was also not disputed that the instructions of 28.3.2000 govern the Indian Administrative Service to which we refer to hereinafter.

10. According to the said instructions, it is in the interest of uniformity and objectivity that while according promotions to different grades, the instructions are strictly followed and screening committees are constituted. The guidelines stated:

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“1. FUNCTIONS OF SCREENING COMMITTEES

It should be ensured while making promotions that suitability of candidates for promotion is considered in an objective and impartial manner. For this purpose, Screening Committees (hereafter referred to as Committees) as mentioned in Annexure I should be formed for different grades whenever an occasion arises for making promotions/confirmations etc. The Committees so constituted shall adjudge the suitability of officers for:-

- a) Promotions in various grades, including ad-hoc promotions in cases where disciplinary proceedings/criminal prosecutions are prolonged;
- b) Confirmation; and
- c) Assessment of the work and conduct of probationers for the purpose of determining the suitability for retention in service or their discharge from service or extending their probation.”

11. It further prescribes:

“6. PROCEDURE TO BE OBSERVED BY COMMITTEES

Each Committee should decide its own method and procedure for objective assessment of the

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suitability of the candidates. While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course. It should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential report and based on strict and rigorous selection process. The misconception about "Average" performance also requires to be cleared. While "Average" may not be taken as adverse remark in respect of an officer, it cannot also be regarded as complimentary to the officer. Such performance should be regarded as routine and undistinguished. Nothing short of above-average and noteworthy performance should entitle an officer to recognition and suitable rewards in terms of career progression.

7. CONFIDENTIAL REPORTS

7.1 The Annual Confidential Reports are the basic inputs on the basis of which assessment is to be made by each Committee. The evaluation of ACRs should be fair, just and non-discriminatory. The Committee should consider ACRs for equal number of years in respect of all officers falling within the zone of consideration for assessing their suitability for promotion. Where one or more ACRs have not been written for any reason, the Committee should consider the available ACRs. If the Reviewing Authority or the Accepting Authority as the case may be, has overruled the Reporting Officer or the Reviewing Authority respectively, the remarks of the Accepting Authority should be taken as the final remarks for the purposes of assessment. While making the assessment, the Committee should not be guided merely by the overall grading that may be recorded in

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the ACRs but should make its own assessment on the basis of the overall entries made in the ACRs.

7.2 In the case of each officer, an overall grading should be given which will be either "Fit" or "Unfit". There will be no benchmark for assessing suitability of officers for promotions.

From the aforesaid, it is clear that it is not a comparative selection.

Only the candidate, who is unfit, has to be excluded and that Committee is not strictly bound to go by the ACRs. It can be besides its own method, the objective assessment of the suitability of the candidates. It is the merit which has to be rewarded.

12. Respondents had made available to us the ACRs of the applicant and also the minutes of the selection Committee. Perusal of it shows that the Selection Committee has based its selection on the basis of general assessment of work as depicted in the ACRs. In other words, it is the Confidential Dossiers alone, which have been assessed and no other procedure, which the Committee could adopt, has been so adopted. The ACRs of the applicant gives the following scenario:

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Year	Remarks
1995-96	Very Good
1996-97	Very Good
1997-98	Outstanding
1998-99	Good
<u>1999-00</u>	
1.4.99 – 5.10.99	Very Good
Oct./1999- March/ 2000	Good
2000-2001	Good
April/01 – 8/01	Good
11/2001-3/2002	Very Good
28.8.02 to 2.12.02	No report
12/2002 to 3/2003	Outstanding

13. Thus, it clearly shows that in the ACRs of the applicant in the last eight years, she has earned two 'Outstanding', three 'Very Good' and three 'Good' reports. Admittedly, there is no

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benchmark that has been provided. There were no adverse entries against the applicant. None had been communicated. She has not suffered any penalty. We have already referred to above that it is not a comparative study that is being done.

14. If an overall view has to be taken, at this stage, we find that when the Committee had considered and gone by the ACRs, there was little ground to ignore the applicant. These observations if had to be made keeping in view the material that was placed before us. We hasten to add that we are not trespassing into the arena of the Screening Committee constituted for the purpose. It would be competent to take a decision but when such is the situation and no further reasons are forthcoming, it was in the fitness of things that some inkling in the peculiar facts could be forthcoming, if the applicant has been declared '**unfit**'/'**fit**', which is absent.

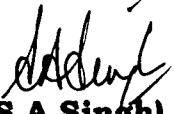
15. For these reasons, we allow the present application and qua the applicant, quash the impugned order. It is directed that

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the Committee may be reconstituted to reconsider the claim of the applicant in accordance with law.


(S.A. Singh)

Member (A)


(V.S. Aggarwal)

Chairman

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