

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 27 DAY OF 11 2009)

***Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)***

Original Application No.783 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

J.P. Gupta, aged about 46 years, Son of Shri Vidya Chand Gupta, Resident of SA/17/128-P18, Ganpat Nagar Colony, Varanasi.

..... *Applicant*

Versus

1. Union of India, through Secretary Ministry of Statistics & Programme Implementation, Sardar Patel Bhawan, Parliament Street, New Delhi.
2. Director, Subordinate Statistical Service, Ministry of Statistics & Programme Implementation, Sardar Patel Bhawan, Parliament Street, New Delhi.
3. Deputy Director General, Ministry of Statistics & Programme Implementation, National Sample Survey Organisation, (Field Operation Division), East Block No.6 Floor 4-7, R.K. Puram, New Delhi.
4. Deputy Director, Ministry of statistics & Programme Implementation, National Sample Survey Organisation, Regional Office, 38-A Sardar Patel Marg, Civil Lines Allahabad.
5. V.P. Srivastava, through Deputy Director General of Ministry of Statistics & Programme Implementation, National Sample Survey Organization, (Filed Operation Division), East Block No.6, Floor 4-7, R.K. Puram, New Delhi.

..... *Respondents*

Present for Applicant : Shri Rakesh Verma

Present for Respondents : Shri D.N. Mishra

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

Through this O.A., the applicant has challenged the order dated 10.02.2005, passed by respondent no.2, by which the representations of the applicant dated 24.09.2004 and 05.01.2005 has been disposed of

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and the applicant was not found fit by Selection Committee. The applicant has claimed following main relief/s:-

- (i) *That this Hon'ble Court may graciously be pleased to quash the impugned orders dated 25.05.2004 qua the applicant and impugned order dated 10.02.2005 passed by respondent no.2.*
- (ii) *That the Hon'ble Tribunal be pleased to direct the respondent to re-fix the seniority of the applicant in accordance with the earlier seniority and place the applicant above to respondent no.4 (which is his original position).*
- (iii) *That the Hon'ble Tribunal be pleased to direct the respondents to consider the applicant for absorption and appointment in the statistical Investigator Grade-III on the basis of running in the same pay-scale.*

2. On 14.09.1983, the applicant was appointed as Investigator in the National Sample Survey Organization in pay scale of Rs.380-560. On the recommendation of the Screening Committee, the 1st financial up-gradation was granted to the Investigator working in Allahabad Region and as such on the basis of Assured Career Progression Scheme, the applicant was also granted the higher scale of Rs. Rs.5500-9000 from 01.02.2001 (Annexure A-1). The Grievance of the applicant is that 649 departmental candidates were absorbed and appointed as Statistical Investigator Grade-III in the pay scale of Rs.5500-9000 vide order dated 01.04.2004. But the applicant's name could not find place in the panel attached with the aforesaid order dated 01.04.2004 (Annexure A-2). According to seniority of the applicant in feeder cadre of Statistical Investigator Grade-IV, he must have been absorbed and appointed as Statistical Investigator Grade-III. Aggrieved by the action of the respondents, the applicant made representation to the

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respondent no.1, clearly indicating therein that his name had been placed at Sl. No.301 of the Provisional Eligibility List and subsequently his name had also been mentioned at Sl. No.276 in the notice indicating the names of the persons to be considered for the absorption and appointment as Statistical Investigator Grade-III, but the name of the applicant has not been indicated in the office order dated 01.04.2004. In Continuation of order dated 01.04.2004 another panel of 61 departmental candidates for absorption and appointment in Statistical Investigator Grade IV in the pay scale of Rs.5000-8000 was published on 25.05.2004 in which name of the applicant has been shown at Sl.No.4 (Annexure A-4). The applicant represented against the action of the respondents by clearly specifying that several juniors to the applicant have been absorbed and appointed as Statistical Investigator Grade-III. As the representation of the applicant did not yield any response, he was constrained to file O.A. No.1466 of 2004 (J.P. Gupta Vs. Union of India & Ors). The said O.A. was disposed of by this Tribunal with a direction to the respondents to consider and decide the representation of the applicant by passing a reasoned and speaking order within a period of three months from the date of receipt of copy of this order (Annexure A-6). The applicant filed a fresh representation on 05.01.2005 (Annexure A-7). The respondent no.2 vide order dated 12.02.2005 decided the representation of the applicant by observing that "by virtue of seniority, the applicant was also considered by selection committee for absorption for Statistical Investigator Grade-III but not found fit by selection committee". It is also urged that the

competent authority did not record any reason as to why the applicant could not be found fit by selection committee. The order dated 10.02.2005 is wholly cryptic, non-speaking and is liable to be set aside.

3. According to the applicant, there are two grades in the subordinate statistical service (Group C), (i) Statistical Investigator Grade-III (Rs. 5500-9000) and Statistical Investigator Grade IV (Rs.5000-8000). It is further submitted that the applicant was granted 1st ACP in Pay scale of Rs.5500-9000 w.e.f. 09.08.1999 meaning thereby prior to 09.08.1998, applicant was working in the pay scale of Rs.5000-8000 and as such in terms of Rule 9 (b) of the Subordinate Statistical Service (Group 'C') Rule Officers/Officials holding the post of Statistical Investigator Grade IV shall be eligible for promotion on non-selection basis to Statistical Investigator Grade-III after completion of three years regular service in Statistical Investigator Grade-IV. It has been contended on behalf of the applicant that his seniority has been determined in the lower pay scale whereas, applicant has been working in higher pay scale w.e.f. 09.08.1999. In a nut-shell, the impugned order has been challenged by the applicant mainly on the ground of being violative of Article 14, 16 and 300-A of the Constitution of India.

4. By filing Counter Affidavit, the respondents have denied the averments contained in the Original Application and submitted that with a view to operationalise the newly created service, several provisions were made in the Subordinate Statistical Service (Group-C)

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Rules, 2002 (Annexure CA-1). For a convenient perusal Rule 8 (ii) (iii) (iv) (v) and (vi) are reproduced hereunder:-

“8(ii) The Controlling Authority shall constitute a Selection Committee headed by a Senior Administrative Grade Officer of Indian Statistical service with three other members from different Ministries/Departments/ Organizations participating in the service to determine the suitability of the existing departmental candidates for appointment and absorption to Statistical Investigator Grade IV of the service and to prepare an order of preferences for each grade.

Explanation: the absence of a member other than the Chairman shall not invalidate the proceedings of the Selection Committee.

(iii) Any departmental candidate referred to in Sub-rule (ii) who is selected to Statistical Investigator Grade IV of the Service, but does not desire to be absorbed in the Service, may continue to hold the post held by him immediately before the selection, as if he has not been selected.

(iv) The Group B departmental candidates who are not absorbed at the initial constitution of the service will continue to work as at present.

Special provisions regarding departmental candidates:-

(v) Notwithstanding anything contained in rule 9, the Group C departmental candidates referred to in sub-rule (iv) may be considered by the Controlling Authority for appointment to the service at a subsequent stage or stages after the suitability of such candidates for appointment to various grades of the service is determined.

(vi) Notwithstanding anything contained in rule 9, the Group C departmental candidates as per sub-rules (iv) and (v) above may be considered against the recognized and approved posts from other Departments which offer the posts in due course after the initial constitution, by the Controlling Authority for appointment to the service at a subsequent date after determining their suitability.”

5. According to the respondents a provisional integrated eligibility list of the existing departmental candidates holding those posts, which have been included in the service, was prepared based on certain guidelines, circulated vide Ministry OM dated 11.06.2002 (Annexure CA-2). The provisional integrated eligibility list was updated and

circulated again to the participating Ministries vide OM No.20.10.2003.

Vide order dated 08.09.2002, a selection committee was constituted.

The said committee examined the suitability of each departmental candidate included in the updated eligibility list and who have opted for joining the service on the basis of certain suitability standard and the candidates, who fulfilled the standard, were recommended for absorption in the service and for their appointment to appropriate grades of the service. The applicant was holding the post of Investigator in the Field Operations on regular basis since 14.09.1983. As per recommendation of 5th Central Pay Commission, the applicant was granted revised upgraded pay scale of Rs.5000-8000 w.e.f. 01.01.1996.

A provisional integrated eligibility list of incumbents holding those posts (in pay scale of Rs.5000-8000) in different participating ministries of departments was prepared based on their date of entry in pay scale of Rs.5000-8000 vis a vis its pre-revised pay scale of Rs.1400-2300. The applicant was placed at Sl. No.301 in the said provisional eligibility list.

The applicant also exercised his option for joining the newly created service. The applicant has clearly expressed his willingness to be absorbed in the grade of service corresponding to the pay scale of Rs.5000-8000 (Annexure CA-5). The selection committee constituted as per provision of Subordinate Statistical Service (Group-C) Rules, considering the suitability of each incumbent, whose names were available in the updated integrated eligibility list, and who had opted to join the service, including the applicant on the basis of certain suitability standard and the candidates, who fulfilled, the suitability

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standard were recommended for appointment in the appropriate grades of the service. As the applicant could not fulfill the suitability standard adopted for appointment to the grade of Statistical Investigator Grade III of the service, the selection committee recommended the applicant for absorption and appointment to the grade of Statistical Investigator Grade IV of the service. After examining the suitability of the applicant, the selection committee has recommended the applicant for Statistical Investigator Grade IV in pay scale of Rs.5000-8000.

6. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial up-gradation) only to the Government servant concerned on personal basis, and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose. The financial up-gradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As the applicant could not fulfill the suitability standard adopted for appointment to the grade of Statistical Investigator Grade III of the service, the selection committee recommended the applicant for absorption and appointment to the grade of Statistical Investigator Grade IV of the service, which corresponds to the pay scale of the post of investigator presently held by him. By virtue of seniority, the applicant was also considered by selection committee for absorption in Statistical Investigator Grade III of Subordinate Statistical Service along with similarly placed persons, but not found fit by the selection

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committee. Shri V.P. Srivastava, though junior to the applicant was found fit for absorption for Statistical Investigator Grade III. The competent authority has accepted the recommendations of the selection committee.

7. Learned counsel for the applicant filed Rejoinder Affidavit and denied the averments contained in the Counter Affidavit. According to the applicant there is no mention that which type of suitability standard, was applied by the concerned committee for examining the suitability of the departmental candidates including the applicant as well as respondent no.5 (Sri V.P. Srivastava). No such fact has been disclosed in the Counter Affidavit. The ACR of the applicant has been totally unblemished and the applicant has always earned good entries in service record. No adverse remark has ever been communicated to him till date. The applicant has placed reliance on paragraph no.7 of the Rejoinder Affidavit. The relevant extract of paragraph no.7 of the Rejoinder Affidavit is being reproduced hereunder:-

"7. Moreover, as clarified earlier, the suitability is only to be seen for the purpose of absorption in Gr. IV to which, admittedly as shown in the impugned order itself, the applicant has been found fit and further placement of the incumbent in Gr. III is not subject to any suitability as per rule 8 and 30% posts shall have to be operated in Gr. III by placing the incumbents therein in order of preference as per their seniority on non-functional basis. It is further submitted that service record including ACR of the applicant has always remained unblemished and he has always earned good entries and that at no point of time, during his service career, he has ever been communicated adverse entries and further, he has never been subjected to any type of charge sheet such as minor or major punishment."

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8. We have heard Sri Rakesh Verma, learned counsel for the applicant and Sri D.N. Mishra, learned counsel for the respondents and perused the written argument ~~filed by the learned~~ counsel for the respondents.

9. Learned counsel for the applicant vehemently argued that without giving any notice or opportunity to the applicant, his seniority has been determined in the lower pay scale, whereas the applicant has been working in higher pay scale w.e.f. 01.02.2001. It has been argued by the learned counsel for the applicant that at present applicant is working in pay scale of Rs.5500-9000, which is a non-selection post and as such determining his seniority in the grade of Statistical Investigator Grade IV is wholly illegal, arbitrary and without application of mind and the order dated 25.05.2004 and 10.02.2005 are liable to be quashed and set aside.

10. Learned counsel for the respondents, on the other hand, argued that the selection committee considered the suitability of each incumbent whose name appeared in the updated integrated eligibility list of departmental candidates in the pay scale of Rs.5000-8000 including the applicant. The applicant has been granted Ist ACP, in the Pay Scale of Rs.5500-9000 w.e.f. 09.08.1999. *It is trite law that the ACP Scheme envisages merely placement in the higher pay scale/grant of financial benefit only to the Government Servant concerned on the personal basis and shall neither amount to*



functional/regular promotion nor would require creation of new post for the purpose. The financial up-gradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to this seniority position. It is alleged by the learned counsel for the respondents that the case of the respondent no.5 is much better than the applicant. Ample opportunity to participate in the selection has been granted to the applicant by the department and the selection committee ultimately found respondent no.5 more suitable than the applicant. The applicant has himself chosen his selection in Grade IV. The ACR grading of the applicant was not up to the mark and as such he could not be selected for grade III by the selection committee. The whole selection proceedings have been done in the fair and legal manner. Learned counsel for the respondents has placed reliance on the decision of Hon'ble Supreme Court reported in **1992 (4) SCC 689 State of Madhya Pradesh Vs. Srikant Chaplekar** and submitted that it is not within the jurisdiction of the court to sit in appeal on the recommendation of departmental promotion committee and in assuming the function of such committee in evaluating service records directing promotion. For convenient the relevant portion of the said judgment is reproduced hereunder:-

"The Tribunal fell into patent error in substituting itself for the DPC. The remarks in the annual confidential report are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. It is not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis. It is for the DPC to

evaluate the same and make recommendations based on such evaluation. In a case where the Court/Tribunal comes to the conclusion that a person was not considered for promotion or the consideration was illegal then the only direction which can be given is to reconsider his case in accordance with law."

11. The decision reported in **AIR 1993 SCW 2866 Indian Air Lines Corporation Vs. Captain K.C. Shukla** has been relied upon by the respondent in order to suggest that the Tribunal and the High Court while exercising its power of judicial review cannot give directions to the authorities regarding the method for selection or promotion. The relevant portion of the said judgment is reproduced hereunder:-

"Judicial Review- Jurisdiction of the High Court under Article 226—
The High Court cannot assume the role of Selection Committee and cannot evaluate the fitness of the candidate for the particular post or promotion—Where a post should be governed by selection or promotion, is governed by promotion and Recruitment Rules—when the Rules are neither violative regular nor the Act, the courts has no jurisdiction to interfere with the implementation of such Rules—The Court is altogether powerless to substitute its own opinion and to devise its own method of evaluating fitness of a candidate for a particular post. The High Court was not justified in granting alternative relief by reducing interview percentage and then working out proportionately the marks obtained by the respondent on A.C.R. evaluation and interview and directing to promote him as by that method he would secure the minimum requirement.

Promotion—*Courts have little jurisdiction to interfere with process of promotion so long as rules are not violative either of the Regulations or of the Act or are arbitrary. (Constitution of India, Articles 14 and 16).*

Service Law—Selection—*Court have little jurisdiction to interfere with process of promotion and selection so long as rules are not violative of Regulations or the Act or arbitrary. (Constitution of India, Articles 14 and 16). ”*

12. Having heard parties counsel, it is seen from the record that the applicant was appointed to the post of Investigator w.e.f. 14.09.1983

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and was granted 1st ACP in the pay scale of Rs.5500-9000 w.e.f. 09.08.1999. As the applicant was holding the post of Investigator on regular basis in the pay scale of Rs.5000-8000 his name was in the seniority list of Investigator (Pay scale of Rs.5000-8000). Admittedly, the applicant was senior to Sri V.P. Srivastava (Respondent no.5) in the said seniority list. As per recommendation of 5th CPC, the Government of India constituted the Subordinate Statistical Service by encompassing 3894 Group B/C Statistical function posts. As per Rule 8, of Subordinate Statistical Service Grade C Rules a Selection Committee was constituted for examining the suitability of existing departmental candidates holding the posts of placement in various grades of Subordinate Statistical Service. The applicant was not found fit for absorption to the post of Statistical Investigator Grade-III by selection committee. The respondent no.5, who was junior to the applicant was found fit for the said post. The applicant was found fit by Selection Committee for absorption to the Statistical Investigator Grade IV (Pay scale 5000-8000). The cadre of controlling authority of Subordinate Statistical Service accepted the recommendation of selection Committee and accordingly, the applicant was absorbed as Statistical Investigator Grade-IV w.e.f. 01.04.2004 vide order dated 25.05.2004. A perusal of the record also indicates that the applicant has been absorbed and appointed as Statistical Investigator Grade IV w.e.f. 01.04.2004 and his name has been included in the seniority list of the Grade IV. On the other hand, respondent no.5 has been absorbed and appointed to Statistical Investigator Grade III w.e.f. 01.04.2004 and his

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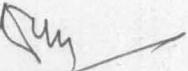
name has been included in the list of Statistical Investigator Grade III. Learned counsel for the applicant has vehemently argued that the applicant should have been absorbed and appointed to the post of Statistical Investigator Grade III (Pay scale 5500-9000) by virtue of fact that he has also been granted ACP Scale in the same grade. We have carefully considered the submission advanced by the learned counsel for the applicant and we are not satisfied with the submission because grant of ACP Scale to incumbent is purely personal and is not related to seniority. The request of the applicant for absorption in Statistical Investigator Grade III has rightly not been acceded to by the Competent Authority. Learned counsel for the applicant would contend that the order dated 10.02.2005 is not speaking and reasoned, we do not find any force in this submission. The order on the representation is wholly speaking and reasoned and has been passed after a careful analysis of the facts of the case.

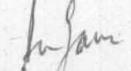
13. Learned counsel for the respondents has placed reliance on the decision of Hon'ble Supreme Court reported in **1996 (2) SCC 488 Nutan Arvind Vs. Union of India.** In the aforesaid decision Hon'ble Supreme Court has observed as follows:-

"The DPC which is a high level committee, considered the merit of the respective candidate, the Appellant thought considered was not promoted, when a high level committee had considered the respective merits of the candidates assured the grading and consider their case for promotion supreme Court cannot sit over the assessment made by DPC as an Appellate Authority."

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14. The learned counsel for the respondents vehemently argued that the DPC enjoyed full discretion to devise its method and procedure for objecting assessment of the suitability and the merit of the candidate, the action of DPC therefore, does not call for interference, and we are fully convinced with the aforesaid argument advanced by the learned counsel for the respondents. In our considered view, the whole selection proceedings have been done in a legal and fair manner. The applicant has utterly failed to make out any case warranting interference in the matter. According, O.A. is dismissed. No costs.


Member-A


Member-J

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