

prescribed by Section 21 of the C.A.T. Act 1985. As regards selection, sub-clause(c) of rule 8(2) lays down a criteria of evaluation of suitability and the selection is to be based on the ACRs and interview. The relevant provision of rule 8(2)(C) is : " In evaluating the suitability of the officers for promotion the Assessment Board shall take into consideration their qualifications, performance, merit, seniority etc. The selection shall be on the basis of Confidential Reports and interview".

3. It will be observed that the list of attributes is not exhaustive it is only illustrative and indicative. That is why the word " etc." is added. The other important attributes are considered, grade, fitness, leadership qualities, research papers published etc. On the basis of these attributes the Board makes over all assessment of the individuals on merits. Thus the respondent avered that the application is devoid of merits and it ^{be} ~~is~~ dismissed.

4. We have heard applicant in person and learned counsel for the respondent at length. The first attack of the applicant is that the 'interview' as a method of promotion or selection should be done away with and in this applicant has pointed out, in his own words, "God takes a whole lifetime to judge a person's worth, while interviewers have to do it in an half an hour". In fact, the applicant has not challenged rule 8(2)(C) of the DRDS Rules 1979 which prescribes a mode of selection by Assessment Board based on evaluation of the candidate on the basis of ACRs followed by interview. Further the applicant has referred to Ajay Hasia V Khalid Mujib SCR 1981(2)726. The authority however ^{has} ~~have~~ no relevance to the present case. It has been held that if the interview has no bearing on the facts to be taken

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into account " is it possible to assess the merits of the candidate on the basis of the such interview? The selection held on such basis must be held arbitrary. Rule 8(2)(C) as quoted ^{is} in comprehensive clause in itself, which gives wide powers to the Assessment Board to assess the suitability of the candidate taking into account various aspects of his personality. The applicant has also referred to AIR - 1971 SC Page 2303 Periakaruppan V Tamil Nadu. AIR 1980 SC 1975 Nishi Maghu V State of Jammu and Kashmir, in these authorities, allocating of more marks to interview was held to be discriminatory, but that has got no reference in the present context of the case. In the present case, Rule 8(2)(C) contain in itself the ^{broad} ~~board~~ spectrum under which the screening of a candidate is to be done for the promotional post. It is done by the Assessment Board which is constituted under Schedule -1 of the said rules. Thus, the first contention of the applicant has no force. Even the applicant himself has referred to the passage of Ajay Hasia V Khalid Mujib (Supra) that " the interview must be conducted with extreme skill and diligence. It must be conducted by persons of high integrity, calibre and qualifications."

5. The second contention taken by the applicant is that the Assessment Board has no authority to prepare merit list as has been done in the case for promotions from Scientist 'D' to Scientist 'E' grade in the year 1985, 1986 and 1987. However, it is not so. We have seen departmental file and the applicant was assessed by the Assessment Board for the year 1985 and was found 'not yet fit' for promotion. The applicant was also assessed in subsequent years, he was not found 'fit'.

The only grievance of the applicant is that he was not informed about the reasons being declared 'unfit', but it is not necessary in the present circumstances of the case. Only those who are found fit were listed and those who are not yet fit were listed ~~and those who are not yet fit were listed~~ separately and those who have been found fit naturally were to be promoted.

6. In the case of Union Public Service Commission etc. v. Hiranyalal Dev & ors reported in 1988 SLJ Vol. III S.C. Page 60 it was held that the Tribunal is not competent to lay down specific law and could not have assumed the role of DPC. The above view has also been followed in the case of Lal Chand Kapoor V. State of Himachal Pradesh reported in ATR 1988(2) Page 578 where it has been held that

" It is not for this Tribunal to determine who from amongst the eligible candidates is superior and should be selected for promotion. That is the function of a Competent Selection Committee or Departmental Promotion Committee. It is well settled that the Courts cannot arrogate to themselves the role and functions of a Selection Committee/Departmental Promotion Committee, duly constituted, cannot be interfered with except when these are found to be perverse, arbitrary or malafide. In the instant case, the recommendations/conclusions of the Review D.P.C. cannot be faulted on this or any other score. On the contrary, we are fully satisfied that the assessment made and conclusions reached by the said Review D.P.C. are just, fair and reasonable, and are not tainted by any extraneous considerations."

We find that this second ^{contention} ~~condition~~ of the applicant has also no force.

7. The applicant further submitted that one of the Member who constituted the Assessment Board was absent in the interview of the two persons. Though it is denied as a fact by the respondent in their reply. However, under Schedule-1 to the Rule it is laid down that the absence of the Member other than Chairman would not invalidate the proceedings of the Assessment Board.

8. The applicant has also during the course of the arguments wanted to rely on a DO letter dated June 21, 1988 signed by Dr. R. Krishnan to one Shri B.S. Murthy but the authenticity of this letter has not been established and ~~however~~ ^{also} no such letter can be taken cognizance ^{of} unless the particulars in the application itself or in the rejoinder are brought out, so that it may form part of record ^{to} be suitably met by respondent incounter.

9. The applicant has also during the course of the arguments filed 'Annexure 'A' to DO letter Pt-I No. 332 dated 13.9.1990' which appears to be some modified guidelines for selection under Rules but that cannot be now taken at all to be relevant for the decision of this application. The applicant assails the selection of 1985 to 1987.

10. Having given a careful consideration we find that Relief No.1, regarding exercise of power by the Tribunal to declare fit and unfit, as said above is beyond its jurisdiction as per the case of U.P.S.C.(Supra) and the case of Lalchand Kapoor(Supra). Relief No.2 is a consequential one and as

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per reasoning this too cannot be allowed. So also the other reliefs.

We are therefore, of the opinion that the application is devoid of merits and is dismissed with no order as to costs.

J. P. Sharma
(J.P.SHARMA) 11.1.91.
MEMBER (J)

M. Y. Priolkar
(M.Y.PRIOLKAR) 11.1.91
MEMBER (A)