

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 52/94

199

~~T.A. No.~~

DATE OF DECISION 12.11.96

A.C. Bhatt Petitioner

Mr. Manish Ehandari Advocate for the Petitioner (s)

Versus

Union of India and others Respondent


Mr. B.N. Purohit and Mr. U.D. Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. GOPAL KRISHNA, VICE CHAIRMAN

The Hon'ble Mr. O.P. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.
4. Whether it needs to be circulated to other Benches of the Tribunal ? No.


(O.P. SHARMA)
ADMINISTRATIVE MEMBER


(GOPAL KRISHNA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.52/94

Date of order: 12-11-1996

A.C.Bhatt : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.Manish Bhandari : Counsel for applicant

Mr.B.N.Purohit : Counsel for respondent No.2

Mr.U.D.Sharma : Counsel for respondent No.3

None present for respondent No.1

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri A.C.Bhatta has prayed that the respondents may be directed to categorise the applicant as an outstanding officer in terms of Regulation 5(4) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and to give him consequential benefits of the promotion to the post of IAS cadre from 31.12.1993. He has further prayed that the Tribunal may call for the complete record of the DPC to see whether compliance with the provisions of Regulation 5(4), as aforesaid, has been made by the respondents. There is a still further prayer that the respondents may be directed to make an over all relative assessment of the applicant after taking into consideration the facts mentioned in the O.A for the reason that the applicant's information is that the complete service record was not placed before the DPC and therefore, it could not make a correct assessment qua the applicant and therefore, the applicant could not be categorised properly.

2. On 24.1.95, the Tribunal had considered an M.A filed by the applicant seeking production of certain records. The

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Tribunal had directed the respondents to produce the ACR dossiers of the candidates whose names had been included in the panel in question and also the minutes of the Select Committee for perusal of the Tribunal. These records were produced on 25.10.96, the date on which the O.A was finally heard.

3. The case of the applicant is that he was appointed as an RAS (Punjab Administrative Service) officer and he joined duty as such on 15.11.1978. He was promoted to the Senior Scale of RAS vide order dated 11.10.84. He was promoted to the Selection Scale of RAS vide order dated 22.8.1988 in the merit quota, in view of his outstanding record of service. The applicant's service record throughout remained outstanding. He performed meritorious work at various places of postings for which he was given merit and commendation certificates, copies of which have been annexed by him alongwith the O.A. He was also sent for training abroad under the Colombo Plan. In view of the commendable work done by the applicant, he was given some such postings which are normally given to IAS officers. Since he was given promotion to the Selection Scale of RAS in the merit quota for the vacancies of the year 1987-88, he was entitled for a positive consideration for appointment to the IAS cadre. The applicant's information is that his name has been kept on the panel of the selected candidates but while making the placement the applicant was not considered as an outstanding officer and therefore, he could not get his placement at the appropriate place in the panel of the selected candidates. By notification dated 31.12.93 (Annx.A1) persons having placement at Sl.No.1 to 9 of the select panel have been given promotion to the IAS cadre.

4. The applicant's grounds for challenging the action of the respondents in not including his name in the select panel/ not granting promotion to the IAS vide Annx.A1 is, amongst others,

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respondents' failure to consider the performance of the applicant by making an overall assessment of his service for the relevant period for which the DPC was to consider the matter. The DPC also failed to give due consideration and weightage to the various merit certificates given to the applicant and his performance while making an overall assessment thereof. The DPC worked in a mechanical way in grading officers in categories such as outstanding, very good and good. It is not only the entries of the APARs (Annual Performance Appraisal Reports) but also other factors which have to be considered while categorising the officers as outstanding, very good, etc. According to the applicant either the complete service records of the applicant were not placed before the DPC or the DPC failed to consider the complete record before categorising the officers as above. Merit awards which the applicant obtained are given only when these are officially approved by the Chief Minister and before that the matter is considered by a High Powered Committee. The DPC failed to give due consideration to the merit certificates given to the applicant. The respondents failed to maintain consistency because on the one hand the applicant had been awarded merit certificates and on the other hand the officials who had considered him fit for merit certificate/award did not categorise him as an outstanding officer while being members of the DPC alongwith others. The DPC while assessing performance of a candidate is not expected to consider the APARs in a mechanical manner. The applicant has also talked about 'border case' of outstanding and in such a case the candidates should be treated as outstanding. The applicant apprehends that all the facts and material relating to the performance of the applicant which earned him merit certificates and awards were not taken into consideration while assessing his overall

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performance. As per Regulation 5(4) of the aforesaid regulations, categorisation of officers as 'outstanding', 'very good', 'good' or 'unfit' should be made on overall relative assessment of their service records but the DPC failed to do so. His case is that it was incumbent on the part of the DPC to place the applicant on a higher pedestal in comparison to other officers but no proper consideration to the merit certificates and the service rendered by the applicant was given while assessing his performance for placement in the panel of IAS cadre. According to the applicant, performance of the candidates was assessed on the basis of the entries in the APARs. This assessment cannot be treated as an overall relative assessment of various candidates. He further averred that all service records of the eligible candidates were not considered but only the APARs for the last 8 years were taken into consideration, although the APARs are only one of the items of service records and not the only item.

5. No reply has been filed on behalf of respondent No.1, the Union of India.

6. Respondent No.2, the State of Rajasthan in its reply has stated that the Tribunal has no jurisdiction to substitute its own assessment for that of the Selection Committee constituted under Regulation 3 of the aforesaid Regulations of 1955. The Selection Committee consists of Chairman or Member of the UPSC, two nominee officers of the Central Govt not below the rank of Joint Secretary and four Senior IAS officers of the State Govt, including the Chief Secretary, who are experts and experienced in assessing service records for preparing list of members of the State Civil Service who are suitable for appointment to the IAS. Respondent No.2 has also stated that the applicant has not made those select list officers who have since been appointed to the IAS or are likely to be appointed as such in turn as

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parties to the O.A. Therefore, the O.A suffers from the vice of misjoinder of necessary parties. They have denied that the service records of the applicant were outstanding throughout. According to them, commendation certificates are generally granted by senior officers to their juniors to boost their morale, etc and these are related to a particular incident. Officers for training under the Colombo Plan are sent by the Govt. of India for training in different subject. For this purpose, the consent of the officers for such training is obtained. The recommendations regarding assignment of foreign training have no relation with the performance of the officers.

The applicant, according to them, has not given details of such postings which are exclusively meant by IAS officers. Particularly they have stated that the post of Additional Collector (Development), Ajmer, to which the applicant was posted and which was claimed by him to a posting for IAS officers is not meant for IAS officers alone. The applicant's promotion to the Selection Scale of RAS under merit quota was made only on the basis of his APARs and this promotion has no relation to the selection for appointment to the IAS for which the selection committee is bound to make an overall assessment of the service records including the APARs. The selection committee which met on 26-29/10.93 made an overall assessment of the service records of the applicant, graded him as 'very good' and placed him at Sl.25 in accordance with his seniority in the FAS as per Regulation 5(4) of the aforesaid Regulations. The applicant's case was considered in an objective manner. The applicant could not be appointed to the IAS by order Annx.A1 because a large number of officers senior to him in the said select list have not been given appointment for want of vacancies. His name would be recommended for appointment in his turn subject to the availability of vacancy during the

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operation of the select list of 1993. Those who were graded as outstanding by the selection committee must have better service record than that of the applicant. The selection committee is an independent body and the applicant has wrongly compared it with the committee for grant of merit certificates. Grant of merit certificates to a State service officer is entirely a different matter. The selection committee minutely considers the service record and the APARs and then makes the necessary gradation. There is no entry like border case of outstanding.

6. Respondent No.3, the UPSC, has in its reply stated that the name of the applicant had figured at Sl.No.34 in the eligibility list of State Civil Service Officers and on the basis of the overall relative assessment of his service records he was assessed as very good, included in the select list and placed at Sl.No.25. The applicant was promoted to the Selection Grade of RAS in 1987-88 whereas he was considered for promotion to the IAS on 26.10.1993. Thus his ACR for more than six years were required to be considered for promotion to the IAS and on that basis the change in his overall grading was not improbable. Further according to respondent No.3, the assessment of various candidates has to be a comparative one. The applicant cannot be given the liberty of making his own self assessment as well as the assessment of other officers particularly when he does not have access to the ACRs of himself or other officers. The selection committee is a high powered body consisting of the officers whose designations have been referred to earlier and the evaluation and the assessment made by them cannot be questioned. Respondent No.3 has added that the applicant's case was duly and properly considered on the basis of the overall service record including the ACRs and he was thereafter given grading as 'very good'. They have denied the selection committee has functioned in a mechanical

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fashion. The merit certificates, etc, given to the applicant cannot be considered in isolation. It is also not the function of the selection committee to sit over the judgment of the reporting and the reviewing officers who have written the ACPs and examine the ACPs of various officers like an appellate authority.

8. The applicant has filed rejoinders to the reply filed by the respondents wherein the averments made in the O.A have been more or less reiterated. In the rejoinder to the reply filed by respondent No.3, it has been stated amongst others that the respondents are under legal obligation to disclose the basis of placing the officers under different categories because the discretion in this regard vested with the respondents has to be exercised judiciously. An affidavit was filed by the Chairman, UPSC, forbidding disclosure the minutes of the selection committee under Sec.23 of the Indian Evidence Act, 1972. However, as already stated above, eventually the minutes have been produced by the respondents for the perusal of the Tribunal.

9. During the arguments, the learned counsel for the applicant stated that the Tribunal has to satisfy itself as to whether the categorisation of officers considered by the selection committee as outstanding, very good, etc, has been made in accordance with Regulation 5(4) of the aforesaid Regulations. He expressed the apprehension that in fact the selection committee had not made a comparative assessment of the service record of the various candidates and that the merit certificates awarded to the applicant had not been taken into consideration while ranking him merely as very good. It was in order to satisfy itself whether a proper comparative assessment of the service records of the various candidates have been made that the Tribunal had called for the records of the case. He reiterated that the reasons for ranking various officers as outstanding, very good, should be disclosed by the respondents to the Tribunal at least. Since, the applicant's service record

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had been outstanding throughout, he deserved to be ranked as outstanding.

10. The learned counsel for respondent No.3, the UPSC, during his oral ^{arguments} stated that since an independent high power selection committee headed by a member of the UPSC had made the assessment of the performance of the various candidates and there was no allegation that the committee had acted arbitrarily or in a malafide manner, the applicant had no right to call in question the result of the deliberations of the committee. Instead of alleging malafides or arbitrariness on the part of the selection committee the applicant had merely averred that the selection committee had not made a proper overall comparative assessment of the service records of the various candidates including the applicant. When the applicant has no material in his possession or basis to suggest that a proper assessment as mentioned above was not made by the selection committee, it is not necessary for the Tribunal to go further into the matter. In this connection, he relied upon the following judgment: Baidyanath Sinha Roy Vs. Union of India & Ors, (1995) 29 ATC 728 decided by Calcutta Bench of the Tribunal, Smt. Nutan Arvind Vs. Union of India & Anr, 1996(1) SLR 774 decided by the Hon'ble Supreme Court, Dr. H.L. Prajapati Vs. Union of India & Ors, 1991(2) SLJ (CAT) 282 decided by Jabalpur Bench of the Tribunal and UPSC Vs. Hiranyalal Dev & Ors, (1988) 2 SCC 242 to urge that the Tribunal cannot sit in judgment over the assessment of service records made by Selection Committee.

11. The learned counsel for respondent No.2, the State of Rajasthan, stated during his oral arguments that the assessment of performance of various candidates was made by a duly constituted high power committee which included officers other than those of the State Govt. also. A selection committee devises its own procedure for categorising officers as

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outstanding, very good, good or unfit. The applicant had no basis or material available with him to suggest that a proper comparative assessment was not made by the selection committee while categorising officers as outstanding, very good, etc.

12. By way of a rejoinder to the arguments of the learned counsel for the respondents, the learned counsel for the applicant took strong objection to the observation of the learned counsel for respondent No.2, the State of Rajasthan, to the effect that the respondents cannot or are not in a position to disclose the basis on which overall comparative assessment, as referred, was made by the selection committee. He added that this amounted to an affirmation by the respondents that the selection committee had made the assessment of various candidates without adopting any proper basis.

13. We have heard the learned counsel for the parties and have perused the material before us including the records produced by the respondents and the judgments cited before us.

14. As to the preliminary objection taken by respondent No.2, the State of Rajasthan, to the maintainability of the O.A on the ground that necessary parties have not been impleaded, the applicant in his rejoinder has stated that the applicant has challenged the policy decision of the respondents and its implementation and it is a case where the correct implementation of the rules and instructions has been sought. After considering the arguments of the rival parties, we have decided to hear the O.A on merits, in the interests of justice.

15. It is apparent from the reply of respondents Nos.2 & 3, i.e. the State of Rajasthan and the UPSC, as also the minutes of the selection committee that the case of the applicant for inclusion in the select list for promotion to the IAS was considered by a high power committee headed by a member of the UPSC and the committee included three high ranking officers of

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the State Govt including its Chief Secretary as also Director (Vigilance), National Fertilizers Corporation, New Delhi, a Govt. of India undertaking and a Joint Secretary of the National Commission for Minorities, New Delhi. The respondents have further stated that the entire service records of the applicant and other officers who were in the eligibility list were considered by the selection committee. The selection committee graded the officers as outstanding, very good, good and unfit and prepared a panel in the order of their grading, not disturbing their seniority once they were placed under a particular grading such as outstanding, very good, etc. No doubt no reasons have been recorded by the selection committee why a particular candidate was graded as outstanding, very good, good or unfit. No rule was shown to us during the hearing suggesting that a selection committee is required to record reasons for grading a particular officer in a particular category laid down in Regulation 5(4) of the aforesaid Regulations, which provides that the selection committee shall grade ^{the} officers considered in the four categories mentioned above for the purpose of their promotion from the State Civil Service to the IAS. Also, no rules has been shown to us which provides that on the basis of a particular material or on the basis of a particular number of entries in the ACR in the category of outstanding, very good, etc, an officer has to be graded as outstanding, very good, etc. In the absence of such a rule, each selection committee has to evolve its own criterion for grading an officer as outstanding, very good, etc. It is not the case of the applicant that the grading of the applicant as very good and some other officers as outstanding has been done by the selection committee for any malafide reasons. The applicant has also not produced any material to show that such grading has been done by the selection committee in an

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arbitrary manner. All that the applicant suggests is that the grading of the applicant was not proper in view of his meritorious service record and a relative assessment of merits of various candidates was not made. In the face of the averment of the respondents that the entire service records of the applicant and others in the eligibility list were considered, the averment that the entire service records were not considered has to be rejected. As regards the comparative assessment, the very fact that the officers have been graded as outstanding, very good, good or unfit shows that a comparative statement has indeed been made.

16. While allowing the M.A for summoning the records, the Tribunal had directed that the ACP dossiers of the candidates whose names had been included in the panel as also the minutes of the selection committee should be produced for the perusal of the Tribunal. These records were produced before us. The learned counsel for the applicant urged that the Tribunal should go through the ACP dossiers of all the candidates whose names were considered by the selection committee to satisfy itself that a proper comparative assessment of the merit of various candidates was indeed made by the selection committee. However the mere fact that we had called for the ACP dossiers of the candidates whose names had been included in the select panel did not mean that we were necessarily required to make a comparative assessment ourselves, as urged by the learned counsel for the applicant. Such a requirement would arise only where it has been alleged that the selection committee had acted malafidely or adopted an arbitrary procedure or criterion. No allegation at all has been made with regard to the former and no material whatsoever has been placed before us to suggest that the committee had acted arbitrarily. Hence, we have declined to make a comparative assessment of our own of the merits of the candidates included in the select panel. The

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applicant has no material to base his averment to the effect that the selection committee acted in a mechanical manner. The averment regarding there being a border case of outstanding has in our view no meaning. It is also not the case of the applicant that service records of a particular number of years were to be considered but those considered were for a larger or a smaller number of years. Therefore, we reject the applicant's averment regarding the challenge to the action of the selection committee with regard to the preparation of the select list as such.

17. Coming to the case of the applicant himself, he has been graded as very good while his claim in the O.A is that he should have been graded as outstanding in view of his performance during the period preceding the meeting of the selection committee. We have gone through the ACRs of the applicant. An ACR or APAR is supposed to reflect the over all performance of an officer for the entire year and any outstanding performance of an officer for which he might have received a commendation certificate is expected to be taken into account by the Reporting and the Reviewing Officers while assessing his performance for a particular year. On a perusal of the applicant's ACRs, we find that he has been graded as outstanding for certain years which perhaps reflects his performance for which he received merit certificates. For certain other years and parts of certain other years however he has not been ranked as outstanding but has been assigned a lower category. We do not see anything arbitrary in assessment of the applicant's performance as very good by the selection committee. The learned counsel for the applicant argued during the hearing since the learned counsel for respondent No.2, the State of Rajasthan, stated during the oral arguments that they cannot disclose the basis of the assessment of the selection

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arbitrary manner. All that the applicant suggests is that the grading of the applicant was not proper in view of his meritorious service record and a relative assessment of merits of various candidates was not made. In the face of the averment of the respondents that the entire service records of the applicant and others in the eligibility list were considered, the averment that the entire service records were not considered has to be rejected. As regards the comparative assessment, the very fact that the officers have been graded as outstanding, very good, good or unfit shows that a comparative statement has indeed been made.

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committee, the proceedings of the selection committee should be struck down as having been drawn-up without any basis. In fact what the learned counsel for respondent No.2 had clarified that since the selection committee had adopted its own procedure for assessing the comparative merit of various candidates, it was not for him to disclose the basis of such assessment.

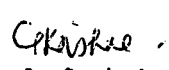
18. Adverting to the judgment cited before us by the learned counsel for respondent No.3, we may refer to the following observations of the Hon'ble Supreme Court in the case of Smt Nutan Arvind in para 6 of the judgment "When a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this court cannot sit over the assessment made by the DPC as an appellate authority". When the Hon'ble Supreme Court held that it cannot sit over the judgment of the DPC as an appellate authority, a fortiori this Tribunal cannot sit in judgment over the assessment of the selection committee when there is no allegation of malafides and there is no basis of allegation of arbitrariness with regard to the proceedings of the selection committee. In the case of UPSC also decided by the Hon'ble Supreme Court, relied upon by the learned counsel for respondent No.3, the Hon'ble Supreme Court held as follows: "How to categorise in the light of the relevant records and what norms should apply in making the assessment are exclusively the functions of the selection committee the Tribunal could not have substituted itself in place of the selection committee and made the selection as if the Tribunal itself was exercising the powers of the selection committee...." More or less the same point has been made in the two judgments of the Tribunal relied upon by the learned counsel for respondent No.3. Therefore, in the circumstances of the present case, the Tribunal cannot take upon itself the task

of making its own comparative assessment of the merits of the various candidates, in substitution of the assessment made by the selection committee. Incidentally, the learned counsel for respondent No.2, the State of Rajasthan, pointed out during the arguments that the applicant had also been promoted to the IAS on the basis of the inclusion of his name in the select panel by the selection Committee.

19. We have also carefully considered all the other averments and arguments advanced on behalf of the applicant and we find no merits therein. The O.A is, therefore, dismissed. No order as to costs.


(O.P.Sharma)

Administrative Member.


(Gopal Krishna)

Vice Chairman.