

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 76/1994
TxxNo.

199

DATE OF DECISION 11-6-2001

Dalu Ram Meena

Petitioner

Mr. Imran Khan, proxy counsel to Advocate for the Petitioner (s)
Mr. P.S. Asopa

Versus

Union of India and ors.

Respondent

Mr. U.D.Sharma, Mr. P.N.Purchit and Advocate for the Respondent (s)
Mr. Manish Bhandari

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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(N.P.NAWANI)
Adm. Member

S.K.AGARWAL
(S.K.AGARWAL)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 11.4.2001

OA No.76/1994

Dalu Ram Meena s/o Shri U.R.Meena, at present working as Addl. Secretary, Jaipur Development Authority, r/o 3/8, Malviya Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through Secretary, Ministry of Personnel, Pension and Public Grievances, New Delhi.
2. Union Public Service Commission through Chairman, Dholpur House, New Delhi.
3. State of Rajasthan through Chief Secretary, Govt. Secretariat, Jaipur.
4. Shri P.C.Balai, at present working as Registrar, Board of Revenue, Ajmer.

.. Respondents

Mr. Imran Khan, proxy counsel to Mr. P.S.Asoo, counsel for the applicant

Mr. U.D.Sharma, counsel for respondent No.2

Mr. B.N.Purohit, counsel for respondent No.3

Mr. Manish Bhandari, Counsel for respondent No.4

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

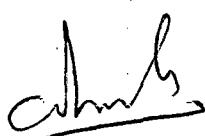
Hon'ble Mr. N.P.Nswani, Administrative Member

Order

Per Hon'ble Mr.N.P.Nswani, Administrative Member

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs:-

"8.1) That the selection proceedings of selection committee of I.A.S. cadre taken place on 26.3.1992 or thereafter in 1992 in pursuance to which the select list for promotion to

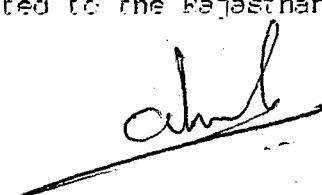


I.A.S. cadre in the year 1992 was prepared may kindly be ordered to be reviewed with a further direction to consider the complete record of applicant in the light of the order dated 6.5.1992.

8.2) That the respondents No.1 to 3 may kindly be directed to place the name of the applicant at appropriate place in the select list of the year 1992 of I.A.S. and after holding the meeting of the review selection committee with a further direction to promote and appoint the applicant in I.A.S. prior to 12.4.1992 with all consequential benefits.

8.3) Any other appropriate order, writ and direction which this Hon'ble Tribunal seems fit, may kindly be passed in favour of the applicant !

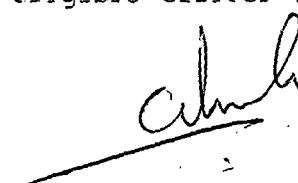
2. Some of the undisputed facts may be mentioned. The applicant was a direct recruit appointee to the Rajasthan Administrative Service (for short RAS) of 1966 batch whereas private respondent No.4 was a direct recruit of 1972 batch. The applicant got all his promotions right upto selection grade earlier than respondent No.4. In the seniority list of RAS as published on 1.6.89, the name of the applicant appears at Sl.No.50 whereas that of respondent No.4 is at Sl.No.62. The applicant was proceeded against under rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (for short Rajasthan Rules of 1958) but the same was dropped on 9.3.1992. Another enquiry was ordered against him under rule 17 of the Rajasthan Rules of 1958 and the same was dropped on 20.4.92. In the meantime a meeting of the Selection Committee of the Union Public Service Commission (for short, UPSC) for promotion of RAS officers to IAS was held between 23 to 25th March, 1992. The name of the applicant did not figure in the Select List prepared on the basis of the said meeting whereas respondent No.4 was appointed to the Rajasthan Cadre of Indian Administrative



Service (for short IAS) vide notification dated 31st December, 1993.

3. The applicant has approached this Tribunal being aggrieved by non-inclusion of his name in the Select List and subsequently his non-appointment in IAS, even though his junior respondent No.4 was appointed vide notification dated 31.12.93. The applicant has challenged his non-selection primarily on four grounds. Firstly, the ACR for the year 1989-90 was not placed before the Selection Committee. Secondly, the enquiry under Rule 17 of the Rajasthan Rules of 1958 which was pending against him on the dates of Selection Committee meeting had come in the way of his selection although the said inquiry was also dropped on 20.4.93 and in any case such an enquiry could not be a bar for consideration/promotion of the applicant in IAS. Thirdly, the applicant had got all his promotions in the RAS including grant of Super Time Scale and, therefore, would be having 'Outstanding'/'Very Good' gradings, but inspite of this, he was not selected for IAS. Fourthly, the applicant was, the very next year, selected and promoted to IAS vide notification dated 31st December, 1993 and this further supports his contention that he had excellent service record and could not have been denied a place in the Select List by the Selection Committee which met on 23-25th March, 1992.

4. In their reply, respondent No.3, the Government of Rajasthan, have stated that the Selection Committee for the year 1992, which met on 23-25 March, 1992, prepared the Select List after overall relative assessment of service record of all serving officials including the applicant and the applicant was not found meritorious enough to be included in the Select List. It is further stated that the factum of pendency of a departmental Enquiry (for short DE) against any eligible officer is of no consequence because in case

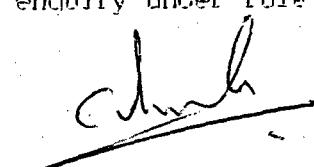


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an officer is otherwise found meritorious, his name is included in the Select List but made provisional as envisaged in proviso to regulation 5(5) of the Indian Administrative Service (Appointment by Promotion) Regulations 1955 (for short Promotion Regulations). It has also been stated that the selection of respondent No.4 was on the basis of his comparative merit and since the promotion to IAS is based entirely on merit, it is nothing unusual for a junior officer to steal a march over a senior officer.

5. In its reply, respondent No.2, the UPSC, also opposed the applicant on more or less similar grounds as advanced by respondent No.3, the State Govt. It has been stated in the reply that the case of the applicant for promotion to IAS has been duly, properly and fairly considered by the Selection Committee in accordance with the provisions of the Promotion Regulations and the applicant was categorised as 'Good' whereas respondent No.4, as also all 27 officers who found place in the Select List were categorised as 'Very Good'.

6. A rejoinder was also filed on behalf of the applicant. It is stated therein that while the State Govt. was silent about availability of ACR for 1989-90, the UPSC had denied that such ACR was not considered. It was, therefore, contended on behalf of the applicant that if ACR for 1989-90 was not made available by the State Govt. to the Selection Committee and further a wrong statement of pendency of DE as well as punishment was placed before the Selection Committee, the same resulted in his non-selection. It is also stated that the ACR for the year 1989-90 was sent by the Department of Personnel to the countersigning authority and was with such an authority till August/September, 1992 and, therefore, could not have been placed before the Selection Committee. It is again reiterated that enquiry under rule 16 has been considered by



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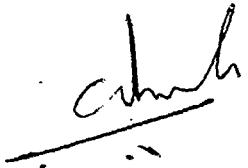
the Selection Committee, although the same was dropped on 24.9.92 and further inquiry under rule 17 of the Rajasthan Rule of 1958 which were in the process of dropping was deliberately delayed and was dropped only after the meeting of the Selection Committee on 20.4.92 and further that punishment order dated 7.6.78 was considered by the respondents whereas the same was set-aside by Hon'ble the Rajasthan High Court on 4.1.1991 and thereafter no chargesheet was served on him upto 26.3.1992. A chargesheet was only served subsequent to the meeting of the Selection Committee on 9.10.92 and a punishment of Censure was awarded whereas the earlier punishment of withholding of one grade increment with cumulative effect w.e.f. 7.6.1978 was placed before the Selection Committee. It was, therefore, contended that if correct position would have been placed before the Selection Committee, there was no reason for the Selection Committee not grading him 'Very Good' and subsequent promotion to the IAS.

7. In their additional reply to the rejoinder, the State Govt. has clarified that ACR for 1989-90 was filled by the reporting officer on 20.3.1991 and was reviewed by first reviewing authority on 20.3.1991 and, therefore, it was wrong to say that the ACR for the year 1989-90 was not made available to the Selection Committee. It was only after the meeting of the Selection Committee that it was sent to second reviewing authority who countersigned it on 25.9.92 agreeing with the reporting officer and first reviewing authority without making any changes. It has also been stated that the statement of pendency of DE made available to the Selection Committee contained names of 11 officers including the applicant, and out of these, four officers were graded 'Very Good' and their names were included in the Select List as "provisional". It was, therefore, contended that if the applicant had been graded as 'Very Good' his name could have also been included in the Select

List as "provisional" and, the apprehension of the applicant that his name was not included in the Select List because of DE, is baseless. It is further mentioned that the Writ Petition filed by the applicant was allowed by the High Court on technical grounds and the State of Rajasthan was allowed to start the enquiry afresh. The order of punishment dated 7.6.1978 was cancelled on 9.4.93 and later on the applicant was imposed with a penalty of Censure on 18.6.93 and, therefore, the Selection Committee was justified to take into consideration the punishment awarded on 7.6.78. The applicant was in fact graded as 'Good' and his subsequent promotion to Super Time Scale in RAS on 6.5.92 and his placement before respondent No.4 in the seniority list of RAS could have been Selection Committee. relevance to the gradings by the Selection Committee. It is also mentioned that simply because the applicant was categorised as 'Very Good' in the meeting of the Selection Committee held in October, 1993, he should have been graded 'Very Good' by the previous Selection Committee which met on 23-25th March, 1992 is not valid, as each Selection Committee does its own assessment on the basis of service record available with them and the Selection Committee which met later on would have the benefit of some additional ACRs.

8. We have heard the learned counsel for the parties and perused all the material on record. We also summoned minutes of the meeting of the Selection Committee from respondent No.2, the UPSC, and have perused the same.

9. As regard the first ground, we are satisfied that the ACR for the year 1980-90 was placed before the Selection Committee, in view of the specific averments made by the respondents in their additional reply and also the statement made by the learned counsel for the State Government at the Bar. As regards ground No.2, we feel it necessary to extract the relevant sub-regulations (4) and (5) of



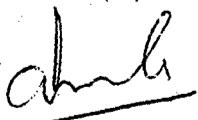
Regulation 5 of
/ the Promotion Regulations as under:-

(4) The Selection Committee shall classify the eligible officers as 'outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be, on an overall relative assessment of the Service records.

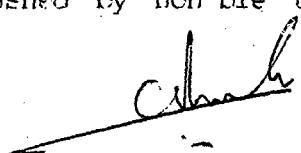
(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as "Good" and the order or names inter se within each category shall be in the order of their seniority in the State Civil/Police Service:

[Provided that the name of any officer so included in the list, shall be treated as provisional if the State Government withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.

A plain reading of sub-regulation (4) would clearly indicate that the Selection Committee classifies all the officers in the eligibility list as 'outstanding', 'very good', 'good' or 'unfit', as the case may be, and on an overall relative assessment of the service records. Further, proviso to sub-regulation (5) provides that if the name of an officer is included in the said list and any proceedings are contemplated or pending against him, his inclusion in the list will be treated as provisional. A combined reading of sub-regulation (4) and (5) will, therefore, make it clear that

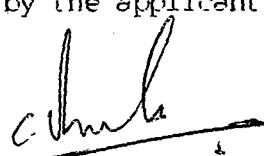

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there is no sealed cover procedure in respect of appointment by promotion of State Civil Service officers to IAS and, instead, as specifically provided under the Promotion Regulations, all the officers in the eligibility list have to be graded by the Selection Committee and if any officer, on the basis of comparative merit is able to secure a place in the Select List but a proceeding is pending against him, his name is treated as provisional. In the instant case, by going through the minutes of the meeting of the Selection Committee held on 23rd, 24th and 25th March, 1992, it is established (from the annexures of the minutes of the meeting) that overall relative assessment was made in respect of all the 83 officers who were in the eligibility list and the applicant whose name figures at Sl.No.22 was given a grading of 'Good'. We also find that as many as 57 officers out of 83 had secured the grading of 'Very Good' but since there were only 27 vacancies, the senior 27 officers securing the grading of 'Very Good' were included in the Select List. Respondent No.4, who also secured the grading of 'Very Good', was also included in the Select List. We also take note of the statement of the learned counsel for the respondents that out of 11 officers against whom disciplinary proceedings were instituted, whose names are given in Paragraph 4(j) of the minutes, four officers were graded as 'Very Good' and their names were included in the Select list as 'provisional'. The applicant also figured in the list of these 11 officers at Sl.No.5 and it is clear that if he was able to secure a grading of 'Very Good' on overall relative assessment, his name could have also been included in the Select List, notwithstanding the disciplinary proceeding pending against him. In view of this, we find no merit in the contention of the applicant that incorrect information was given to the Selection Committee by the respondents and that the punishment of withholding of one grade increment on cumulative basis awarded to him, and subsequently quashed by Hon'ble the High Court of Rajasthan on



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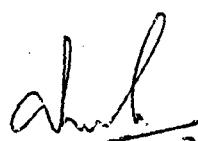
4.1.1991, had influenced the Selection Committee in not including his name in the Select List. As regards ground No.3, we hold that the promotions secured by the applicant in the RAS under the State Government have no direct relevance to the promotion to IAS which are guided by Promotion Regulations. The Selection Committee of the UPSC is required to follow the provisions of the Promotion Regulations and they have asserted in their reply that the case of the applicant has been duly, properly and fairly considered by the Selection Committee strictly in accordance with the Promotion Regulations. It is by now ^{well} settled law that Courts/Tribunals are not required to interfere with the assessment made by such a high level Selection Committee of the UPSC. In the instant case, the applicant has himself not seriously challenged the assessment of the Selection Committee and his case was essentially based on the ACR of 1989-90 not having been placed before the Selection committee and the punishment awarded earlier to him having influenced the decision of the Selection Committee. We find no reason to interfere with the assessment made by the Selection Committee and we have already rejected the contention of the applicant that the ACR for the year 1989-90 was not placed before the Selection Committee and that the Committee was influenced by placement before it a punishment awarded to the applicant which was subsequently quashed by Hon'ble the High Court. As regards the fourth ground, the promotion to IAS under Promotion Regulations is based on the comparative merits of the officers who are in the eligibility list and each committee arrives at an overall grading of all the candidates after considering the service records including the ACRs placed before it and, therefore, it cannot be said that if the Selection Committee which met in October, 1993 had graded the applicant as 'Very Good', there was no reason for the Selection Committee which met in March, 92 to have graded him only 'Good'. The last ground raised by the applicant also, therefore, fails.



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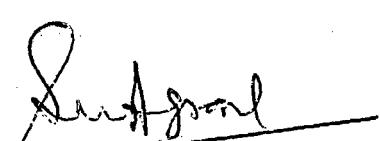
10. In view of above discussions, we find no merit in this OA and it is accordingly dismissed with no order as to costs.

The minutes of the meeting of the Selection Committee may be returned to the learned counsel for respondent No.2, the UPSC.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member