

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

(23)

O.A. No. 513/1995 199  
F.A. No.

DATE OF DECISION 26.8.1997

M.S. Pareek Petitioner  
Mr. Rajendra Soni Advocate for the Petitioner (s)  
**Versus**  
Union of India & Ors. Respondent  
Mr. U.D. Sharma Advocate for the Respondent (s)

**CORAM :**

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

**The Hon'ble Mr. Ratan Prakash, Judicial Member**

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

(Ratan Prakash)  
Judicial Member

(O.P. Sharma)  
Administrative Member.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.513/1995

Date of order: 26-8-1997

M.S.Pareek : Applicant

Vs.

1. Union of India through Secretary, Home Department, Central Secretariat, New Delhi.
2. State of Rajasthan through its Chief Secretary, Govt. of Rajasthan, Govt. Secretariat, Jaipur.
3. Deputy Secretary, Personnel M-I Deptt, Govt. of Rajasthan, Govt. Secretariat, Jaipur.
4. Shri Samar Beer Panwar, IGP, Training Police Headquarters (PHQ), Near Eari Chopar, Jaipur.

..Respondents.

Mr.Rajendra Soni - Counsel for applicant

Mr.U.D.Sharma - Counsel for respondents Nos.2 & 3.

CORAM:

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

Hon'ble Mr.Ratan Prakash, Judicial Member.

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri M.S.Pareek has prayed that the Tribunal may call for the entire records relating to the case and after perusing these may quash the order dated 6.11.95 (Annex.A3 to the unamended application), in so far as it relates to promotion of respondent No.4, Shri Samar Beer Panwar, on the post of Additional Director General of Police, Training, Jaipur in scale Rs.7300-7600. He has also sought a direction that the applicant may be promoted to the post of Additional Director General of Police in the said scale w.e.f. 6.11.95, the date from which the person junior to the applicant has been promoted, with all consequential benefits.

2. The applicant had earlier filed the O.A on 8.11.95. He has filed the present amended O.A in September 1996 with the

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permission of the Tribunal. Respondents Nos.2 & 3 had also earlier filed the reply to the O.A in November 1995. They have thereafter filed reply to the amended O.A in October 1996. The applicant had earlier filed a rejoinder to the reply to the unamended O.A but no rejoinder seems to have been filed to the reply to the amended O.A. The annexures referred to in this order are those which were appended to the unamended O.A, there being no annexures to the amended O.A. Respondent No.1, the Union of India through Secretary to the Home Department and respondent No.4, Shri Samar Beer Panwar, have not filed their replies. Reply has been filed only on behalf of respondents Nos.2 & 3.

4. The applicant's case is that he is a direct recruit of 1964 batch of IFS (Indian Police Service) and belongs to Rajasthan Cadre. Initially he was appointed as ASP and thereafter he got promotions from time to time. He was promoted as Inspector General of Police (IGP) on 8.8.1991. His name appears at Sl.No. 2 in the order dated 8.8.91 (Annex.A1) by which he was promoted. A seniority list of IFS officers of Rajasthan cadre, published by the Deptt. of Personnel, Govt. of Rajasthan, on 16.1.95 (Annex.A2), shows the name of the applicant at Sl.No.11 and the name of respondent No.4 who belongs to 1965 batch of IFS is at Sl.No.13. Respondent No.4 has been promoted as Additional Director General, Training, Jaipur in scale Rs.7300-7600 vide order dated 6.11.95 (Annex.A3) but the applicant has not been granted promotion to the said post/scale although he is senior to respondent No.4. Granting of promotion to respondent No.4 who is junior to the applicant, ignoring the case of the applicant amounts to violation of Articles 14 and 16 of the Constitution.

5. Further, according to the applicant, during the pendency of the O.A, the respondents have issued a "posting list" of IPS

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officers as on 5/13.12.95 (Annex.A4) in which it has been stated that the post of Additional Director General Training is an ex-cadre post and all ex-cadre posts are required to be filledup by promotion, only on the basis of seniority. Therefore, since the applicant was senior to respondent No.4 and since the post of Additional Director General Training, being an ex-cadre post, was required to be filledup only by seniority, the applicant ought to have been promoted in preference to respondent No.4.

6. Respondents Nos.2 & 3 in their reply to the amended O.A have stated that the applicant has since been posted as Officer on Special Duty in the Home Department, Rajasthan Secretariat, Jaipur vide order dated 29.8.1996. The fact that the applicant was senior to respondent No.4 in the list of IGP's or as disclosed in Annex.A2, being the civil list of IPS officers of Rajasthan cadre as on 16.1.95, has not been disputed by the respondents. They have also accepted that the post of Additional Director General, Training, was an ex-cadre post. They have however stated that this post being a very senior and super-time scale post is being filledup like other super-time scale posts in the IPS by following the criterion laid down in Rule 3(2A) of the IPS(Pay) Rules, 1954 and also after assessing the suitability of eligible officers by evaluation of their service record by a screening committee. This post has been treated as a selection post. The case of the applicant alongwith the cases of other eligible officers including respondent No.4 had been duly considered by the screening committee on the basis of the aforesaid criteria. The screening committee found the applicant as unfit for promotion and found respondent No.4 as more meritorious and accordingly recommended respondent No.4 for promotion to the post of Addl.DGP. The competent authority accepted the recommendations and  
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accordingly promoted respondent No.4 as Addl.DGP, Training, vide order dated 6.11.95 (Annex.A2). The applicant had no right of being appointed or promoted solely on the basis of his seniority on the post of IGP and his right was limited to the consideration of his case for appointment or promotion. The said right has been duly taken care of by considering his case for promotion alongwith the cases of other eligible officers. The respondents have not accepted the authenticity of Annex.A4 and they have denied that there is any provision therein that all ex-cadre posts are required to be filledup by promotion only on the basis of seniority. By the procedure adopted by the respondents as contained in Rule 3(2A) ibid, a person who is junior can steal a march over one who is senior.

7. During his oral argument, the learned counsel for the applicant cited the following judgments:

i) Vasant Waman Pradhan Vs. State of Maharashtra & Anr, 1991 (1) SLJ (CAT) 257, decided by the New Bombay Bench of the Tribunal.

The learned counsel for the applicant relied upon para 7 of the judgment wherein it has been stated that while Rule 3(2A) of the IPS(Pay) Rules provides that selection is to be based on merits with due regard to seniority, a resolution of the Govt. of Maharashtra provided that it would be based on merit alone, regardless of seniority. The DPC made selection only on the basis of "positive merit" without any weightage to seniority. This procedure was held by the Tribunal to be irregular and it was further held that weightage to seniority should have been given. Some other portions of this judgment have also been relied upon which more or less support the same conclusion.

ii) R.C.Kohli Vs. Union of India & Ors, 1988(1) SLJ (CAT) 273 decided by the Principal Bench of the Tribunal.

The learned counsel for the applicant relied upon paras 7, 8 and 9 of the judgment, wherein it was ~~found~~ <sup>held</sup> that the review

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DPC in that case had found the applicant concerned as unfit but did not record any reasons for arriving at that conclusion. The Tribunal observed that the guidelines in para 3(iv) of the instructions dated 26.8.1976 issued by the Department of Personnel had not been ~~forwarded~~ <sup>followed</sup>. The Tribunal held that even if these instructions were not mandatory their substantial compliance was necessary. The learned counsel for the applicant stated that no reasons had been given by the respondents either, why the applicant had been superseded.

iii) Padam Kumar Garg, IPS Vs. Union of India & Ors, (1991) 16 ATC 561, decided by the Bangalore Bench of the Tribunal.

The learned counsel for the applicant drew attention to paras 6,7 & 8 of this judgment. In para 6, it was held by the Tribunal that adverse remarks in the ACR with regard to integrity unless established by holding a due enquiry should not be taken into account by a DPC. The Tribunal also found the classification as "average" on the basis of the ACRs as not appropriate. The Tribunal also held in para 8 that if there was wrongful supersession in the matter of promotion to senior scale of IPS then the applicant's case was required to be reconsidered and in case he is found suitable, retrospective promotion with all consequential benefits was required to be granted to him.

iv) Gurdayal Singh Fiji Vs. State of Punjab & Ors, 1979 (1) SLP 804, decided by the Hon'ble Supreme Court.

The learned counsel for the applicant relied upon para 17 of this judgment wherein the Hon'ble Supreme Court held that selection committee should record reasons for superseding the claims of seniors in the matter of promotion, however brief the reasons may be.

v) Union of India Vs. M.L.Capoer & Ors, AIR 1974 SC 87, decided by the Hon'ble Supreme Court.



The learned counsel for the applicant drew attention to paras 22 and 28 of this judgment in which it was observed that selection for inclusion in the select list for promotion of the State Civil Service officers to the IAS/IPS should be based on merit and suitability with due regard to seniority and that the selection committee must record reason while superseding an officer.

vi) Amarjit Singh Vs. Union of India, (1988) 6 ATC 85, decided by the Jabalpur Bench of the Tribunal.

In this case, the applicant had been considered unfit for promotion on the basis of certain adverse entries in the past years some of which had already been expunged. The Govt. was directed to reconvene the DPC meeting which should take into account only those ACRs which would have been seen in the year in which the name of the applicant was dropped by the DPC on the ground of adverse entries in the ACRs.

vii) Naresh Chandra Vasishtha Vs. State of Haryana & Union of India & Anr, (1989) 10 ATC 713, decided by the Chandigarh Bench of the Tribunal.

This was a case in which appointment to IAS by promotion was involved. The Tribunal noted that the applicant had been included in the select list in 1980 but was dropped in 1981. There were circumstances giving rise to a suspicion that selection was not fair. The Tribunal called for the records and found that there was no justification for down-grading the overall merit of the applicant. The Tribunal further observed that the applicant should have been graded as 'very good' instead of 'good'.

viii) T. Challam Vs. State of Gujarat & Union of India & Ors, (1989) 10 ATC 170, decided by the Ahmedabad Bench of the Tribunal.

In this judgment the Tribunal held that it was obligatory

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on the DPC to record reasons while superseding the applicant who was eligible for promotion to the super time scale of IAS.

ix) Union of India & Ors Vs. S.S.Kothiyal & Ors, 1995 (3) Service Cases Today 782, decided by the Rajasthan High Court.

In this judgment the Rajasthan High Court observed that no basis had been recorded by the DPC for supersession of the petitioner. It was not enough to say that best officers who were found fit had been selected. Since conclusions and reasons of the DPC were missing from the proceedings, the proceedings were not in conformity with the requirement of Articles 14 and 16 of the Constitution.

x) Shri Vidya Ram Vs. State of Haryana, 1995(3) Service Cases Today 50, decided by the Punjab & Haryana High Court.

In this judgment, while dealing with the criterion of promotion on the basis of seniority cum fitness, the High Court held that a person who is senior should ordinarily be promoted despite better merits of a junior. Comparative consideration of all eligible candidates is not required when promotion is made on the basis of seniority cum fitness. Since there was nothing adverse against the petitioners in that case, they were ordered to be promoted with effect from the date persons junior to them had been promoted.

xi) Ramkumar Singh Vs. State of Rajasthan & Ors, (1986) 2 Judicial Surveyor 196, decided by the Rajasthan High Court.

In this judgment it was held that where promotions has been granted to a Govt.servant even on ad hoc or on officiating basis it should be deemed that the previous adverse entries in Confidential Roll prior to grant of promotion stand washed away. The learned counsel for the applicant, therefore, argued that the screening committee would not have been justified in examining the service record of the applicant for the period prior to his promotion as IGP for the purpose of judging

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whether he is suitable for promotion to the post of Additional DG.

xii) Ram Avtar Khandelwal Vs. High Court of Judicature for Rajasthan at Jodhpur through its Registrar, 1992(2) Western Law Cases 587, decided by the Rajasthan High Court.

In this judgment according to the learned counsel for the applicant uncommunicated adverse entries in the ACR prior to consideration of the petitioner's case for promotion are not a proper ground for his supersession.

8. The learned counsel for the applicant, therefore, argued that since the applicant had been promoted as IGP by order dated 8.8.1991, any entries adverse in nature or otherwise in his ACR prior to the period of his promotion as IGP should not be taken into account for the purpose of judging his suitability for promotion. Further, according to him even according to the criterion adopted by the respondents, seniority has to be given due weightage and the respondents cannot ignore it at their own sweet will. He added that in the reply to the unamended O.A, the respondents had stated that "selection" was the only criterion to be adopted for promotion. He, therefore, stated that the respondents had entirely ignored the element of seniority while considering the case of the applicant alongwith the cases of others including that of respondent No.4, for promotion. Further, according to him even if promotions are made in accordance with Rule 3(2A) of the IPS (Pay) Rules, the applicant who was the senior-most person for have the purpose of consideration for promotion should not been ignored unless he was declared unfit. He prayed that the Tribunal may examine the records to find out whether the applicant had been unjustly ignored for promotion by applying a in criteria which is fact not applicable to his case.

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9. The learned counsel for the respondents stated that there was no basis in the averment of the applicant that promotion to the post of Addl.DG was only on the basis of seniority and no such inference could be drawn from the contents of Annex.A4 even if it is assumed that Annex.A4 is an authentic document. Since this was an ex-cadre post and no particular procedure for appointment to the post has been provided in the rules, the respondents in their wisdom chose to apply the same criterion as laid down in Rule 3(2A) of the IFS (Pay) Rules which is applicable to the senior level cadre posts, because the post of Addl.DG was also a high level super-time scale post. The adoption of this criterion by the respondents could not be considered to be irrational or arbitrary. Where no rules are prescribed, the Govt can always adopt a reasonable mode of selection for fillingup the post. He added that although the respondents had placed before the Tribunal the ACEs of the applicant and all others who were considered alongwith the applicant for promotion to the post of Addl.DG and also the proceedings of the screening committee, the Tribunal would not be justified in assuming to itself the role of an appellate authority, in judging whether the respondents were justified in ignoring the applicant's case for promotion. According to him the power available to the Tribunal was only of judicial review under which it could examine whether the process of decision making adopted by the respondents was just and proper. In support of his arguments and the averments in the written reply, he cited the following judgments.

i) Smt.Nutan Arvind Vs. Union of India & Ors, 1996(1) SLR 774, decided by the Hon'ble Supreme Court.

In this judgment the Hon'ble Supreme Court held that where a departmental promotion committee, which was a high level committee, considered cases for promotion, the court cannot sit over the assessment made by the DFC, as an appellate authority.

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ii) S.L.Soni Vs.State of M.P & Anr. 1995(2) SLR 760, decided by the Hon'ble Supreme Court.

In this judgment the Hon'ble Supreme Court held that where a high level committee considers the case for promotion and does not find the person concerned suitable on the basis of the service record, the court cannot itself evaluate the comparative merits of the candidate.

iii)Shiv Darshan Lal Vs. Union of India & Ors, (1997) 35 ATC 309, decided by the Chandigarh Bench of the Tribunal.

In this judgment the Tribunal held that promotion to a Class I post is primarily based on merit and not on seniority, unless it is specifically provided otherwise in the rules. Further, merit and suitability were the primary considerations for inclusion of names in the list for promotion. In this particular case the Tribunal had held that persons with almost equal merits were to be arranged in the order of their inter se seniority in the feeder post.

The learned counsel for the respondents therefore argued that only where two or more persons were found to be of equal merit on the basis of their assessment of service record, the senior person would be entitled to promotion but where a junior was found to be more meritorious on a comparative assessment of their performance, the junior person was entitled to promotion superseding the senior, when the criterion was selection on merit with due regard to seniority. Since in the instant case, the criterion adopted as laid down in Rule 3(2A) of the IPS (Pay) Rules was promotion by selection on merit with due regard to seniority, the respondents would be justified in promoting a person who is more meritorious than the applicant.

iv) Union of India Vs. Dr.P.Rajaram & Ors, 1993(2) SLJ 66, decided by the Hon'ble Supreme Court.

In this judgment the Hon'ble Supreme Court while dealing

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with a case of promotions to posts in super-time grade of Central Health Service, scale Rs.5900-6700, held that posts of this nature in super-time grade carrying high salary should not be filledup merely on the basis of seniority but the criterion for filling-up these posts should be on merits. The learned counsel for the respondents argued that the same considerations would apply to filling-up the post of Addl.DG carrying scale of Rs.7300-7600.

v) Sarat Kumar Dash & Ors Vs. Biswajit Patnaik & Ors, (1995) 29 ATC 351, decided by the Hon'ble Supreme Court.

In this judgment the Hon'ble Supreme Court examined the question regarding the role of seniority where the criterion for selection is merit cum suitability. The Hon'ble Supreme Court held that where after consideration and evaluation of merits and suitability a person was found to be ~~in merit~~ <sup>superior</sup>, seniority had no role to play in the matter of grant of promotion.

vi) H.V.Sreenivasa Murthy & Ors Vs. the Karnataka Public Service Commission by its Chairman & Ors., 1978(2) SLP 773 decided by the Karnataka High Court.

In this judgment the Karnataka High Court held that where the selection is required to be made on the basis of relative merit among suitable candidates, eligibility cannot be equated with suitability. The learned counsel for the respondents, therefore, urged that in the light of the ratio of these judgments the criterion adopted by the respondents for filling-up the post of Addl.DG was fully justified and since a junior to the applicant had been found more meritorious on a comparative assessment, the respondents were justified in granting promotion to him.

10. By way of rejoinder to the arguments of the learned counsel for respondents Nos.2 & 3, the learned counsel for the

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applicant cited the judgment of the Hon'ble Supreme Court in U.P.Jal Nigam & Ors Vs. Prabhat Chandra Jain & Ors, JT 1996(1) SC 641 wherein according to him, it <sup>was</sup> held that if an employee earns a higher grading in ACE in one year and lower grading is given to him in the subsequent year, reason for such lower grading should be recorded in the file and change should be communicated to him in the form of advice. He stated that if there was any down gradation of the performance of the applicant compared to that for an earlier year, such change had not been communicated to him in any form and therefore reliance on such down graded ACE was not justified for the purpose of denying promotion to him.

He ~~had~~ also placed before us a photo copy of Govt. of India's instruction dated 9.12.87 which according to him show that while granting promotion to selection grade in Group-A services in the Govt. of India it is not necessary to grade the officers as "outstanding" or "very good" or to give consideration to all officers in the prescribed zone as is done in the case of promotion on selection method. According to him, therefore, this very criterion should have been adopted by the screening committee in the instant case while considering the case of the applicant and others for promotion to the post of Addl.DG. Since the applicant was the seniormost amongst those being considered for promotion, he should have been granted promotion because he was not otherwise unfit for promotion.

11. We have heard the learned counsel for the parties, have perused the material on record and also the judgments cited before us. We have also perused the records produced before us by the respondents, for production of which directions had been given by order dated 25.4.96.

12. There is no dispute between the parties that the post of Addl.DG carrying scale Rs.7300-7600 is an ex-cadre post. There

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is also no dispute that the applicant was the seniormost person to be considered for promotion to this post. Question now is whether there were any rules specifically prescribed for promotion to this ex-cadre post. The applicant's contention that seniority is the only criterion for promotion to this post is not borne out by any document. Annex.A-4 does not provide any such thing, as contended by the applicant. In the reply to the unamended O.A, the respondents had contended that the criterion for promotion to this post was selection and in their reply to the amended O.A they have stated that it is on the basis of Rule 3(2A) of the IPS (Pay) Rules, which is merit with due regard to seniority. The learned counsel for the applicant stated during the arguments that the respondents had gone back on what they had stated in their reply to the unamended O.A, but he later conceded that more or less the same stand or position was taken by the respondents in their reply to the amended O.A which had earlier been taken in the reply to the unamended O.A. Rule 3(2A) of the IPS (Pay) Rules reads as under:

"3(2A) Appointment to the Selection Grade and to posts carrying pay above the time-scale of pay in the Indian Police Service shall be made by selection on merit with due regard to seniority."

When there are no rules separately prescribed for promotion to the post of Addl.DG, the respondents were not unjustified in adopting the same rule which is applicable for promotions to posts carrying pay above the time-scale of pay in the IPS, regardless of whether the posts are within the cadre or these are outside the cadre. The criterion adopted by the respondents is rational and cannot at all be considered to be arbitrary. What Rule 3(2A) provides is that appointment to the posts in question shall be made by selection on merit with due regard to

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seniority. Adoption of this criterion ensures that ~~not~~ the high level post of Addl.DG carrying scale of pay above super-time scale is filled by selecting the most meritorious person from amongst those who are eligible for consideration for promotion. This issue has been considered by the Hon'ble Supreme Court in various judgments, some of which have been cited by the learned counsel for the respondents during the arguments. The conclusion that emerges on going through various judgments cited before us by both the parties, on the question of interpretation of this provision, is that persons should be included in the zone of consideration in accordance with their seniority position and their relative merit will be assessed on the basis of their service record. If two persons are of equal merit, the senior one would be entitled for appointment in preference to the junior. Where however the junior is more meritorious than the senior, the junior would be entitled to promotion in preference to the senior. In this criterion seniority is not totally ignored but due regard is given to it in the manner indicated above.

13. It is the settled position in law that this Tribunal is not a court of appeal but it only exercises power of judicial review. We have, therefore, only to see whether the criterion as actually applied by the respondents or in other words, the process of selection as adopted, is just and proper and in keeping with the rules on which reliance has been placed. We find that the screening committee consisting of four top officers of the State Govt had considered on 31.10.95 the names of four officers for promotion and the applicant was the seniormost amongst them. His name was also considered by the committee alongwith three of his juniors. All except the applicant were found suitable for promotion. We can find no fault with the process of selection adopted by the screening

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committee. We also find no evidence to support the conclusion that there was no material on the basis of which the applicant could be declared to be unfit for promotion. We cannot therefore question the conclusions of the screening committee. On the question whether the screening committee should have considered the ACRs of 7 years as contended by the respondents or for a smaller number of years i.e. only for the period after the promotion of the applicant to the post of IGP, we are of the view that it was for the screening committee to take a decision in this regard. Since this was a high level post carrying higher scale than super-time scale of pay, the respondents could not be considered to be unjustified in considering the record of service of a larger number of years when the same criterion has been uniformly adopted for considering the service record of all the officers whose cases were under consideration.

14. There are no adverse entries as such in the ACR of the applicant for the years for which his record has been considered. The judgments cited by the learned counsel for the applicant with regard to the treatment to be given where there are adverse entries in the ACRs have therefore no relevance. We can also not consider the case in the light of judgment in UP Jal Nigam case. Reasons that it has not been pleaded in the O.A that no opportunity had been given to the applicant to explain his case before there was any downgradation of entries in the ACR for any year. A number of judgments have been cited to suggest that where an officer has been superseded the reasons for such supersession must be recorded. We have carefully gone through these judgments and are of the view that the principle laid down therein has not to be applied mechanically, but it has to be applied in the <sup>Context</sup> ~~context~~ of facts of a given case. In

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the case of Sarat Kumar Dash cited supra, the Hon'ble Supreme Court has observed as follows:

"11. The next question is whether omission to record reasons amounts to violation of the principles of natural justice. The principle of audi alteram partem is a basic concept of the principle of natural justice. The omnipotency inherent in the doctrine is that no one should be condemned without being heard or given an opportunity to the person affected to present his case before taking the decision or action. In the field of administrative action, this principle has been applied to ensure fair play and justice to the affected person. However, the doctrine is not a cure to all the ills in the process. Its application depends upon the factual matrix to improve administrative efficiency and expediency and to meet out justice. The procedure adopted would be just and fair. The reasons are links between maker of the order or the author of the decision and the order itself. The record is called to consider whether he has given due consideration to the facts placed before him before he arrives at the decision. Therefore, the reasons in the order or found from the record bridges the link between the maker of the order and the order itself or decision. Therefore the natural justice is not a rigid nor an inflexible rule. It should be applied to a given fact situation, depending upon the background of the statutory provisions, nature of the right which may be affected and the consequences that may entail. It is already seen that the Commission evolved the objective criteria in awarding marks to the given grading of the candidates and on its basis recommended their cases for promotion. In P.S.Dass case this Court held that the grading itself is a reason and no separate reasons in that

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behalf in arranging the order of merit need be given. The grading is to obviate the need to record reasons. The finding of the Tribunal that the selection by the FSC without recording reasons or need to record separately the reasons for evolving the criteria for selection is also clearly illegal."

15. In the present case no such grading as referred to the above para has been made by the respondents. However the number of persons considered was only four. ACFs of the officers were considered by the screening committee before arriving at its finding. A summary of the ACFs for the relevant years placed before us by the respondents shows that the record of service of the persons considered fit for promotion was far better than of the applicant and there could be no two opinions about this matter. As stated by the Hon'ble Supreme Court in the paragraph from Sarat Kumar Dash case reproduced above, the principles of natural justice are not a rigid or inflexible rule and their application has to be considered in the light of the facts and circumstances of each case. What has essentially to be seen is whether any injustice has been done to the applicant in the process of selection as adopted by the respondents. We are satisfied there there is no irregularity in the process of selection adopted. We find that since the confidential records speak for themselves, non-recording of reasons for adjudging the applicant as unsuitable for promotion and judging his juniors as fit for promotion has not vitiated the decision making process.

16. The instructions cited by the learned counsel for the applicant regarding the procedure to be adopted for grant of selection grade in Group-A services are not at all applicable to the present case. It has been clarified in those very instructions that the selection grade in Group-A Central

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Services is "non-functional" selection grade and therefore, appointments to selection grade may be made according to seniority based on suitability, etc. When a selection grade is "nonfunctional" the position is that a person draws higher pay merely on the basis of his seniority for doing more or less the same job as he was doing earlier. That is not the position here, nor is there any averment to this effect by the applicant in the O.A. Therefore, in our view, the instructions dated 9.12.87 cited by the learned counsel for the applicant are not applicable to the present case.

16. We have also carefully considered all the other grounds and arguments advanced on behalf of the applicant, also in the light of the judgments cited on his behalf. We find no merit therein. The O.A is dismissed. No order as to costs.



(Patan Prakash)

Judicial Member.



(O.P. Sharma)

Administrative Member.