

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.102/98

Date of order: 20/4/2008

Ashutosh Bhargava, S/o Sh. Deen Dayal Bhargava, R/o I/9,
Gandhi Nagar, Jaipur, presently posted as Special
Secretary, Deptt. of Animal Husbandry, Govt. of
Rajasthan, Jaipur.

...Applicant.

Vs.

1. State of Rajasthan through Secretary, Deptt. of
Personnel, Govt. of Rajasthan, Secretariat, Jaipur.
2. Union of India through Secretary, Mini. of Personnel,
Public Grievances & Pensions, Govt of India, New Delhi.

...Respondents.

Mr. Ajay Rastogi - Counsel for applicant

Mr. U.D. Sharma - Counsel for respondents.

CORAM:

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

Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER.


In this O.A under Sec.19 of the Administrative
Tribunals Act, 1985, applicant makes a prayer:

- i) to direct the respondents to give promotion to the
applicant in supertime scale of IAS w.e.f. the date on
which it has been given to other members of service
alloted to Rajasthan cadre 1981 batch;
- ii) to direct the respondents to give consequential
benefits which may follow from grant of relief;
- iii) to quash and set aside the guidelines/instructions
adopted by the respondent State for promotion to
supertime scale of IAS.
- iv) to declare the procedure adopted by the screening
committee as unlawful.

2. Facts of the case as stated by the applicant are that

Inde

the applicant is a member of IAS 1981 Batch of Rajasthan Cadre. He was granted senior scale of IAS in 1985 and was promoted to selection grade w.e.f. 1.7.94 in accordance with the provisions as contained in Rule 3(2-A) of the Indian Administrative Service (Pay) Rules, 1954 (for short 'Pay rules of 1954'). It is stated that after promotion in selection grade in 1994, no APAR was adverse against the applicant and no adverse remark was communicated to him rather his work was appreciated by Election Commission for General Parliamentary Election in 1996. Even prior to 1994, the performance of the applicant was appreciated and certificate were issued by the authorities appreciating the performance of the applicant which is revealed on perusal from Annx.A4 to A10. It is stated that the Screening Committee met in Dec.1997 but the recommendations of the Screening Committee were not given final shape, therefore, the Screening Committee again met on 20.1.98 and did not recommend the applicant for promotion to supertime scale of IAS. It is stated that the screening committee only assessed the performance of the applicant on the basis of APAR and other materials and certificates issued by the authorities appreciating the performance of the applicant were not taken into consideration. The screening committee was expected to take its recommendation on the basis of over all performance and not on the basis of grading given in the APAR. It is stated that as per Rule 3(2-A) of the Pay Rules of 1954, promotion to supertime scale should be given on the basis of merit with due regard to seniority. It is also stated that promotion to supertime scale is a time bound promotion which is to be given after 15 years of service in the cadre. It is stated that empanelment and promotion to higher scale are totally different which is governed by the statutory rules of 3(2-A) of the Pay Rules of 1954. No



guidelines were published/notified for this purpose. It is further stated that screening committee had completely ignored the statutory rules and the consistent practice is that if there is any adverse record, he is entitled to promotion on the basis of his seniority. The APARs have not ^{been} correctly appreciated by the screening committee. If the reviewing authority has reduced the gradings, this should have been communicated to the applicant. It is stated that after 1994, the record of service of the applicant must be treated as meritorious. It is also stated that outstanding grading is not given and if a person is categorised as not below the average, he is entitled to promotion. Therefore, the decision to supersede the applicant in supertime scale of IAS is ex facie illegal, arbitrary, unjust, unreasonable and contrary to the instructions issued by the govt. of India as ^Srespondent State has completely ignored the seniority and merit alone cannot be the basis of supertime scale of IAS. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. It is stated in the reply that promotion to supertime scale of IAS are given on the basis of comparative merit of the eligible officers as laid down in Rule 3(2-A) of the Pay Rules of 1954 according to which a junior officer can steal a march over a less meritorious senior officer. It is also stated that no meeting of screening committee was held in November/December 97 to consider the promotion of supertime scale of IAS of 1981 Batch consisting of high ranking officers such as Chief Secretary, Addl. Chief Secretary and Principal ~~Secretary~~ Secretary. It is stated that the committee has duly considered all the relevant records including the APAR and other appreciation letters which were placed on ACR Dossier but did not find the applicant more meritorious/suitable for promotion to supertime scale of IAS.

Just

It is also stated that the case of the applicant was again considered by the review screening committee in the meeting held on 23.9.92. The said screening committee after perusal of whole relevant record did not find the applicant suitable/meritorious for promotion to the supertime scale of IAS. It is stated that the committee consisted of seniormost officers of the State Govt, made objective assessment and thereafter did not find the applicant ^emeritorious enough for promotion to supertime scale of IAS. It is stated that there is no rule for time bound promotion to the supertime scale of IAS. It was denied that the State Govt adopted a method for selection/promotion which is being adopted by the Govt of India for empanelment of officers for the post of Joint Secretaries and above in Govt of India but adopted a procedure as given in Rule 3(2-A) of the Pay Rules of 1954. It is stated that the case of the applicant and others have been considered strictly in accordance with the provisions as given in Rule 3(2-A) of the Pay Rules of 1954. It is denied that there has been any violation of the instructions issued by Govt of India on 28.3.75 and May 1983 and the screening committee had perused the over all service record of the applicant prior and after 1994, therefore, the applicant cannot have any grievance against the denial of his promotion to supertime scale of IAS. It is stated that there is no provision in the rules which requires that reasons should be recorded when an officer is found unsuitable for promotion. The screening committee had considered the entire service record of the applicant and thereafter an objective assessment has been made. The Committee has not acted in malafide and arbitrary manner, therefore, this Tribunal should not interfere in the assessment made by such committee and the applicant has no case for interference by this Tribunal and the O.A devoid of

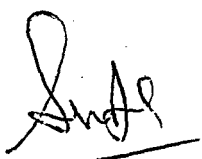
Shaf

any merit is liable to be dismissed.

4. Rejoinder has also been filed reiterating the facts as stated in the O.A which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The counsel for the applicant has argued that the applicant was promoted in selection grade in Dec.1994 and thereafter no adverse remarks were communicated to him. Moreover, the work and performance of the applicant was appreciated at so many counts but even then the applicant was not promoted in supertime scale of IAS which was arbitrary and illegal. He also argued that the guidelines were not followed as the order denying promotion to the applicant is not a reasoned and speaking order. In support of his contentions, he has referred to (i) 2000 AIR SCW 3745, Badrinath Vs. Govt of Tamil Nadu & Ors and (ii) 1991(1) AISLJ 257 (CAT Bombay) D.W. Pradhan Vs. State of Maharashtra & Anr. On the other hand, the learned counsel for the respondents has argued that the Screening Committee consisting of high ranking officers of the State Govt, made comparative and objective assessment after perusal of over all service record of the applicant and did not find the applicant meritorious even in comparison to his juniors, therefore, he was not promoted. The counsel for the respondents also argued that the power to judicial review of this Tribunal are limited so this Tribunal should not interfere unless the applicant establishes a case of malafide and arbitrariness on the part of the screening committee. He also argued that the guidelines are only directory and not mandatory. The counsel for the respondents also raised an objection that the applicant has approached this Tribunal without exhausting all the remedies available to him, therefore this O.A is not maintainable on this ground alone.



7. We have given anxious consideration to the rival contentions of both the parties and also perused the record including the ACR dosiers.

8. The learned counsel for the applicant has vehemently urged that the applicant was denied promotion to supertime scale of IAS arbitrarily and without any basis. On the other hand, the learned counsel for the respondents has argued that senior most officers of the State Govt has considered the comparative merit objectively and thereafter decision was taken not to promote the applicant in supertime scale of IAS, therefore, there is no illegality or irregularity in the action taken by the respondents' department for denial of promotion to the applicant in supertime scale of IAS.

9. It is settled position of law that this Tribunal is not a Court of appeal but it only exercises powers of judicial review. We can, therefore, only see whether the criteria has been actually applied by the respondents or the process of selection adopted by the respondents' department is just and proper, keeping in view the rules on which the screening committee has placed a reliance.

10. Admittedly, the Screening committee in the selection process was consisted of Chief Secretary, Addl. Chief Secretary and Principal Secretary, high ranking officers of the State Govt who made comparative assessment of the performance of the applicant on the basis of service record produced before them.

11. In Smt. Nutan Arvind Vs. UOI & Ors, 1996(1) SLR 774, decided by 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 DPC, as an appellate authority.

12. In S.L. Soni Vs. State of M.P & Anr, 1995(2) SLR 760,

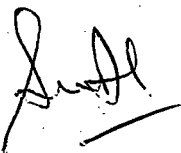
Smt. Arvind

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.

13. In Shiv Darshan Lal Vs. UOI & Ors, (1997) 35 ATC 309 the Chandigarh Bench of 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 Pay Rules of 1954 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.

14. In Sarat Kumar Dash & Ors Vs. Biswajit Patnaik & Ors, (1995) 29 ATC 351, 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

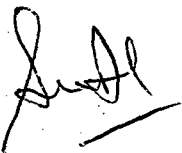


the Hon'ble Supreme Court held that where a high level committee considers the case for promotion and does not find the person concerned suitable on the basis of the service record, the Court cannot itself evaluate the comparative merits of the candidate.

13. In Shiv Darshan Lal Vs. UOI & Ors, (1997) 35 ATC 309 the Chandigarh Bench of 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 Pay Rules of 1954 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.

14. In Sarat Kumar Dash & Ors Vs. Biswajit Patnaik & Ors, (1995) 29 ATC 351, 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 merit

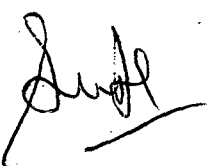


and suitability a person was found to be superior seniority had no role to play in the matter of grant of promotion.

15. In R.S.Das Vs. UOI & Ors, AIR 1987 SC 593, it was held that where selection is made ^{on} merit alone for promotion to a higher service, selection of an officer though junior in service in preference to his senior does not strictly amount to supersession. When promotion is made on the basis of seniority, the senior has preferential right to promotion against his junior, when promotion is made on merit alone senior officer has no legal right to promotion and ~~junior~~ if junior to him are selected for promotion on merit the senior officer is not legally superseded. When merit is the criterion for the selection amongst the members of the service, no officer has legal right to be selected for promotion, except that he has only right to be considered along with others.

16. In the instant case, the screening committee consisting of Chief Secretary, Addl.Chief Secretary and Principal Secretary and other high ranking officers of the State Govt made comparative and objective assessment, after perusal of over all service record of the applicant and others and reached to the conclusion that the applicant is not suitable for promotion to supertime scale of IAS, therefore, promotion of the applicant was denied. No allegation of malafides are imputed against the screening committee. We have also perused the record produced before us, as per directions given by this Tribunal on 16.1.2001 and we reached to the conclusion that there is no infirmity/illegality in the action taken by the screening committee.

17. We have also noticed that the screening committee has acted in conformity of the provisions given in Rule 3(2A) of the IAS Pay Rules of 1954 and the screening committee has also followed the instructions issued from time to time for this



purpose. Merely that order of denying promotion to the applicant in supertime scale of IAS is not a reasoned and speaking order, does not entitle the applicant to quash the process of selection.

18. As regards the ground taken by the counsel for the respondents regarding exhausting of the remedies available to the applicant, Sec.20(3) of the Administrative Tribunals Act, 1985, provides that the Tribunal shall not ordinarily admit the petition if the applicant has not exhausted all the remedies available to him. In the O.A itself, the applicant has mentioned that he has exhausted all the remedies available to him whereas it is undisputed fact that the applicant did not challenge the denial of supertime scale to him in appeal which was a statutory remedy available to him. The counsel for the applicant has argued that in the changed circumstances, the applicant is entitled to the decision of the O.A on merits. In support of his contention, he has referred to Prabhu Dayal Vs. State of Rajasthan, 1995 LIC 95. On the other hand, the counsel for the respondents vehemently argued that the applicant has approached this Tribunal without exhausting the remedies available to him under the Service Rules, therefore the O.A is not maintainable as such.

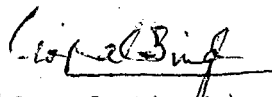
19. We have given anxious consideration to the rival contentions of both the parties. It is true that under Sec.20 of the Administrative Tribunals Act, 1985 provides that a party has to approach the Tribunal after exhausting the remedies available to him under the Service Rules and applicant admittedly did not file an appeal against the denial of supertime scale in IAS. No doubt there is no blanket prohibition for entertaining the petition but the applicant has to prove the circumstances under which it was practically possible to him to exhaust the statutory remedies available to

[Handwritten signature]

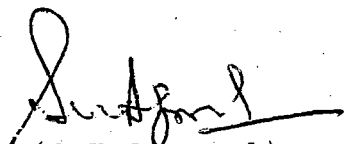
him. Therefore, we are of the opinion that the applicant has approached the Tribunal without exhausting the remedies available to him and on this count the O.A is not maintainable. Even if for the sake of arguments, it is accepted that in the changed circumstances as stated by the counsel for the applicant, this O.A should not be dismissed on this ground and it must be heard on merit, then even on merit the applicant has no case as explained above.

20. Therefore, in our view, the applicant has no case for interference by this Tribunal and the O.A devoid of any merit is liable to be dismissed.

21. We, therefore, dismiss the O.A having no merit, with no order as to costs.


(Gopal Singh)

Member (A).


(S.K. Agarwal)

Member (J).