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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 28.08.2000

OA No.139/98

Gulab Singh Darda S/o Shri Moti Singh Darda, resident of Bazar No.2, Bhilwara, Permanent resident of Mandalgarh, Distt. Bhilwara.

.. Applicant

V e r s u s

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi.
2. State of Rajasthan through the Secretary, Department of Personnel, Govt. of Rajasthan, Jaipur.

.. Respondents

Mr. Manish Bhandari, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

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

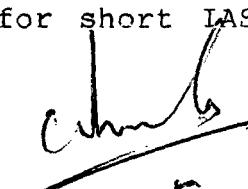
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

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

This Original Application has been registered in this Bench of the Tribunal after having been transferred from the Jodhpur Bench, where it was registered as OA No.266/93, vide orders of the Chairman, Central Administrative Tribunal communicated through the letter dated 27.3.1998.

2. The controversy in this Original Application lies in a small compass; the applicant prays that the Selection Scale (scale Rs. 4800-5700) in the Indian Administrative Service (for short IAS) may be granted to him w.e.f. 30.12.1991 with



arrears and interest @ 24% thereon in view of the fact that persons not only junior to him and having not even completed 13 years of service as required, were granted the Selection Grade, overlooking his just claim, having excellent service record. Being aggrieved by such denial and his representation dated 12.3.1993 having been rejected, the applicant has filed this OA under Section 19 of the Administrative Tribunals Act.

3. It is the contention of the applicant that he was entitled to the Selection Grade of IAS after entering the 14th year of service as provided in sub rule (2) of Rule 3 of the Indian Administrative Service (Pay) Rules, 1954 (for short Pay Rules). The appointment to the Selection Grade is granted in terms of sub-rule (2-A) of Rule 3 of the Pay Rules which is reproduced below for sake of convenience:-

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

Provided that no member of the Service shall be eligible for appointment to the Selection Grade unless he has entered the fourteenth year of service calculated from the year of allotment assigned to him under Rule 3 of the Indian Administrative Service (Regulation of Seniority) Rules 1954 or under Regulation 3 of the Indian Administrative Service (Seniority of Special Recruits) Regulation, 1960, as the case may be."

4. We have heard the learned counsel for the parties

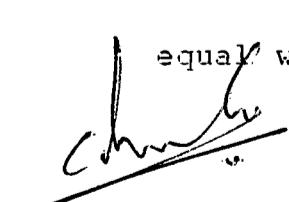
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and have carefully perused the material on record.

5. The applicant has based his case essentially on following grounds:-

(i) The applicant was found suitable for promotion to IAS (from Rajasthan Administrative Service) with 1979 as year of allotment, proving that he had excellent service record and was promoted vide order dated 25.7.1987 and was ^{further advanced} promoted to the Junior Administrative Grade of IAS after completion of 9 years of service reckoned from year of allotment, on account of his meritorious record and outstanding performance. On completion of 13 years of service he became eligible for conferment of the Selection Grade in 1992 and should have been conferred with the Selection Grade because of his excellent record.

(ii) There were 10 posts of Special Secretaries in the Govt. of Rajasthan and there was a practice in the State to post such officers as Special Secretaries who are likely to be granted the Selection Grade and is drawing high salary in the Selection Grade. While the applicant was holding the post of Deputy Secretary in the Administrative Reforms Department in December, 1991, and on account of his having excellent service record, Government thought it fit to post him as a Special Secretary vide order dated 30.12.1991 (Ann.A2) and he should, therefore, be granted Selection Grade w.e.f. the same date also on the principle of equal pay for equal work. In the Civil List of IAS officers as on



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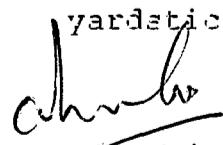
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1.6.1992 the applicant has shown at Sl.No. 120 and in Col.7 he has been described as Special Secretary, Adm. Reforms Department. Denial of the Selection Grade to him w.e.f. 30.12.1991 was violative of Articles 14, 16 and 39(d) of the Constitution of India.

(iii) The applicant superannuated on 31.12.1992 and till his retirement no adverse remarks were ever communicated to him and he performed his duties on various responsible posts with outstanding output. Adverse remarks were recorded in his APR of 1977-78 but it was expunged on the order of Rajasthan Civil Services Appellate Tribunal.

(iv) While the name of the applicant was not included in the order dated 7.9.1992 (Ann.A1) appointing certain officers to the Selection Grade of the service, as many as 9 officers ^{were promoted ab} who had not even entered the fourteenth year of service as mandated by Rule (2A) of the Pay Rules. They were appointed to IAS in December, 1988 and would have completed 13 years of service in December, 1992 and were eligible only then but by giving them Selection Grade vide order dated 7.9.1992, unequal have been made equals which is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

(v) No formula has been laid down by the Union of India for conferment of the Selection Grade and the respondents should reveal the formula, criteria and yardstick in the instant case. Intention of the



State Government as reflected in their letter at Ann.A7 was not to have any selection and give it to all categories of officers w.e.f. 1.7.1992.

(vi) The case of Shri Pankaj ^{was considered along} with the applicant and he was not granted Selection Grade vide order dated 7.9.1992 but immediately thereafter on 30.7.1992 he was granted the same w.e.f. 1.7.1992. Shri G.S.Nerwani had faced an enquiry and had also other adverse material against him yet his name has been recommended for Selection Grade. Thus, it appears that the Selection Grade was given without any criteria and just on the sweet-will of the State Government.

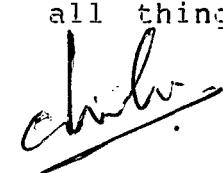
6. Respondent No.2, the State Government, opposing the case of the applicant, has stated that as per the circular dated 27.12.1975 (Ann.R.X) issued by the Government of India (for short GOI), a Committee consisting of the Chief Secretary and two Principal Secretaries to the Government had screened the service record of the eligible officers on the basis of merit with due regard to seniority as provided in Rule 3(3A) of the Pay Rules. This high level Committee considered the case of the applicant alongwith other eligible officers of IAS from three sources of recruitment on their entering fourteenth year of service and in its comparative assessment of the overall record of the officers, did not find the applicant suitable for promotion to the Selection Grade. An officer has ^{only} ~~right~~ to be considered and cannot claim Selection Grade as a matter of right. The case of the applicant was duly considered and he was not adjudged suitable by the Screening Committee. In the absence of malafides, grounds raised by the applicant



such as long experience, absence of communication of adverse remarks, having not been imposed with any penalty, excellent service record proved by his initial promotion to IAS and then grant of Senior Scale/JAG etc. are of no consequence when assessment has been made by a high level Screening Committee. For the very same reason, the applicant cannot challenge the grant of Selection Grade to S/Shri Pankaj and G.S.Narwani, who were adjudged suitable by the same Committee, even if ^{The case of} Shri Pankaj was taken up by the said Committee after a few days on receipt of his APRs from GOI. The respondents have, therefore, contended that there is no merit in the OA and it deserves to be dismissed.

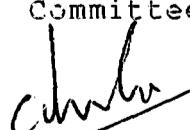
7. We have heard the learned counsel for the parties and have carefully gone through all the material on record, including all the averments, pleadings and documents.

8. The relevant rule in the IAS (Pay) Rules, 1954 has already been extracted in para 3 of this order. A plain reading of the same will reveal that appointment to the Selection Grade of the IAS is done on the basis of "Selection on merit with due regard to seniority". Therefore, there is no force in the contention of the applicant that Selection Grade has been granted without any policy and just on the sweet-will of the State Government. The applicant has also claimed that the expression used in Rule 3(2A) means that equal weightage has to be given to both the merit and the seniority. We do not think such a claim is sustainable in law. It is well settled that in case of selection on merit with regard to seniority, the seniority plays two roles. First, it determines the inclusion in the list of eligible officers. Secondly, in case all things are equal amongst two officers, the senior will



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have to be selected. It is not disputed that the case of the applicant was considered by the Screening Committee and thus the seniority of the applicant had played its part. The merit was judged by a high level Screening Committee headed by the Chief Secretary and had two very senior officers of the rank of Principal Secretaries and on their comparative assessment of all the officers under consideration, the applicant was not found suitable. We have already seen the method of "selection on merit" with due regard to the seniority" has been prescribed in the Pay Rules themselves. We also notice from the guidelines issued by the Govt. of India through their circular letter dated 27.12.1975 that for promotion to Selection Grade, a Committee consisting of the Chief Secretary and two other senior officers of the State Government may screen the members of the IAS....". It has been stated by respondent No.2 that a Screening Committee with Chief Secretary and two Principal Secretaries to Govt. had screened the eligible officers for promotion to Selection Grade. In the absence of any specific provision in the guidelines regarding procedure to be adopted by the Screening Committee, the Committee was free to adopt its own procedure provided it was made applicable uniformly to all the officers under screening and the respondents have stated that uniform procedure was applied and the Committee had adjudged the applicant not suitable enough for promotion. It is a well settled principle of service jurisprudence that the Tribunal is not an appellate authority, it only exercises the power of judicial review and has to satisfy itself that no arbitrary action was taken by the authority. After going through the rival contentions and against the background of the discussions recorded above, we hold that the Screening Committee was validly constituted that no discrimination was



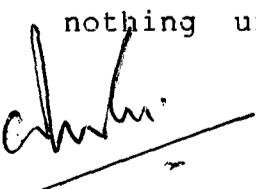
meted out to the applicant by the Screening Committee and that the method of selection adopted was as per the relevant rules. We, therefore, find no justification to intervene with the recommendations of the Screening Committee and consequent with the impugned order dated 7.9.1992 (Ann.A1).

9. We have also carefully considered all the grounds raised by the applicant with regard to his claim that he held responsible posts, was having excellent record, had never been communicated any adverse remarks except in 1977-78 which were also ultimately expunged, had never been imposed with any penalty etc., but we are constrained to observe that these grounds are not sustainable. These grounds may have no impact in any comparative assessment amongst competing candidates. It has been denied by the respondents that the post of Special Secretary, on which the applicant has placed much reliance, was ~~not~~ of the level of Selection Grade in IAS with the pay of Selection Grade but ^{was} of only the Senior Scale which could be held by a member of the Service with less than 13 years of service. The respondents have also explained to our satisfaction as to how S/Shri Pankaj and G.S.Narwani were promoted to the Selection Grade and, therefore, there was no basis to hold that the applicant was discriminated vis-a-vis these two officers. Finally, at the specific request of the applicant, we obtained from the respondents the APRs of the applicant and examined the APRs as submitted for the years 1988-89, 1989-90, 1990-91 and 1991-92 (1.4.91 to 31.12.1991) as also copy of the minutes of the meeting of the Screening Committee held on 24th and 26th June, 1992. On perusal of APRs, we found no discrepancy and find that an overall review of all these APRs does indicate that it would have nothing unusual if the Screening Committee has for

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meted out to the applicant by the Screening Committee and that the method of selection adopted was as per the relevant rules. We, therefore, find no justification to intervene with the recommendations of the Screening Committee and consequent with the impugned order dated 7.9.1992 (Ann.A1).

9. We have also carefully considered all the grounds raised by the applicant with regard to his claim that he held responsible posts, was having excellent record, had never been communicated any adverse remarks except in 1977-78 which were also ultimately expugned, had never been imposed with any penalty etc., but we are constrained to observe that these grounds are not sustainable. These grounds may have no impact in any comparative assessment amongst competing candidates. It has been denied by the respondents that the post of Special Secretary, on which the applicant has placed much reliance, was ~~not~~ of the level of Selection Grade in IAS with the pay of Selection Grade but ^{was} of only the Senior Scale which could be held by a member of the Service with less than 13 years of service. The respondents have also explained to our satisfaction as to how S/Shri Pankaj and G.S.Narwani were promoted to the Selection Grade and, therefore, there was no basis to hold that the applicant was discriminated vis-a-vis these two officers. Finally, at the specific request of the applicant, we obtained from the respondents the APRs of the applicant and examined the APRs as submitted for the years 1988-89, 1989-90, 1990-91 and 1991-92 (1.4.91 to 31.12.1991) as also copy of the minutes of the meeting of the Screening Committee held on 24th and 26th June, 1992. On perusal of the APRs, we found no discrepancy and find that an overall reading of all these APRs does indicate that it would have been nothing unusual if the Screening Committee has found the

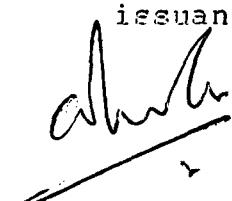


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applicant to be not suitable for promotion to the Selection Grade of a premier service like IAS. From the minutes of the meeting of the Screening Committee, it is confirmed that the case of the applicant was also considered alongwith a total of 25 eligible officers and the Committee found all except the applicant meritorious enough for promotion to the Selection Grade of the IAS. It is well known that in the present scheme of things, the AFRs are the true reflection of the performance of a Govt. employee and in a selection based on merit with due regard to seniority, a candidate with better AFRs does steal a march over the candidates who might be senior but having APRs of lesser gradings. Thus based on the perusal of the submitted APRs and the minutes of the meeting of the Selection Committee, we do not find it possible to interfere with the assessment made by a high level Screening Committee. The applicant had only a right to be considered which has been done and no right to be selected for the promotion.

10. Learned counsel for the respondent has also drawn our attention to the case of Ram Rakha v. Union of India and ors., reported in 1988 (5) SLR 380 in support of his contentions whrein the Allahabad Bench of this Tribunal has held that an IPS officer does not automatically become entitled to get the Selection Grade without his formal selection on the basis of merit with due regard to seniority. The said ruling is as well applicable on the case in hand.

11. In view of the facts and circumstances of the case and the legal position as discussed above, we find no infirmities with the process of promotion of the member of the service to the Selection Grade of the IAS culminating with the issuance of the impugned order dated 7.9.1992 (Ann. A1) and



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cannot, therefore, persuade ourselves to interfere with the said order.

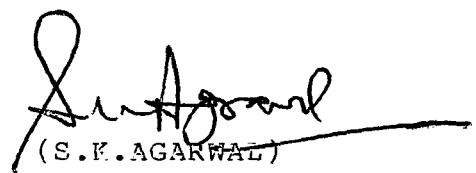
12. In the result, the OA does not succeed and is accordingly dismissed with no order as to costs.

The documents received from the learned counsel for respondent No.3 may be returned to him.



(N.P.NAWANI)

Adm. Member



(S.K.AGARWAL)

Judl.Member