

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR

Date of order : 02.05.2002

O.A. No. 290/1998

S.S. Kalsy son of late Shri Sawan Singh Kalsy aged around 56 years resident of 2/117, S.P.S. Colony, Mansarovar, Jaipur, presently working as Technical Officer (T-S), Central Sheep and Wool Research Institute, Avikanagar, (Malpura), Distt. Tonk.

... Applicant.

v e r s u s

1. Indian Council for Agriculture Research through its Managing Director, Krishi Bhawan, New Delhi.
2. Central Sheep and Wool Research Institute, Avikanagar, Distt. Tonk through its Director.

... Respondents.

Mr. P.P. Mathur, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

CORAM:

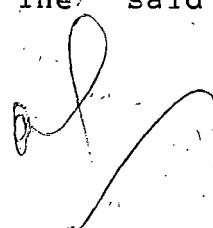
Hon'ble Mr. Justice O.P. Garg, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Administrative Member

: ORDER :

(Per Hon'ble Mr. Justice O.P. Garg, Vice Chairman)

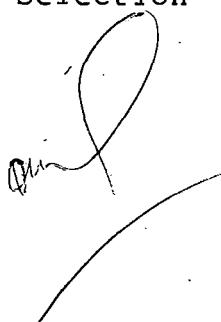
The applicant, who is presently working as Technical Officer (T-8) in the Central Sheep & Wool Research Institute, Avikanagar (Malpura), District Tonk, is claiming promotion to T-9 Grade. A Selection Committee was constituted for the purpose of assessment of the overall performance of the applicant. The said Committee submitted its



assessment report with regard to the applicant as well as one Shri H.S. Batra and found both of them to be fit for promotion to T-9 Grade. Though Shri Batra was promoted to T-9 Grade, the applicant was informed that his case for promotion on merit was considered by the Council, but the same has not been acceded to. The impugned order dated 12.06.97 (Annexure A/1) has been challenged by the applicant in this O.A. under Section 19 of the Administrative Tribunals Act, 1985. A detailed reply has been filed on behalf of the respondents.

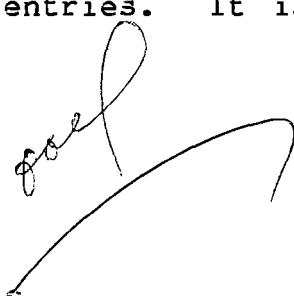
2. Heard Shri P.P. Mathur, learned counsel for the applicant as well as Shri V.S. Gurjar, appearing on behalf of the respondents.

3. It is common case of the parties that in the Technical Service Rules (TSR, for short), there is no provision providing a particular yardstick or the bench mark to gauge the suitability of a particular employee for promotion. Shri Gurjar, however, pointed out that the TSR has been supplemented by the departmental circular and it has been provided that those candidates, who have earned three "very good" remarks during the last five years would be entitled to promotion from TS-8 to Ts-9 Grade. Learned counsel for the applicant has challenged the validity of the circular letters on the ground that they are contrary to the provisions of the TSR. Though the applicant has been found to be suitable for promotion to T-9 post by the Selection Committee after taking into

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consideration of overall assessment of his service record during the period of last five years. the competent authority refused to grant promotion to the applicant only on the ground that the applicant did not earn three "very good" entries during the assessment period of last five years.

4. Shri P.P. Mathur, learned counsel for the applicant pointed out that Shri H.S. Batra, whose case was recommended for promotion by the same Selection Committee, has been promoted even though he did not have three "very good" entries, while the recommendation in respect of the applicant made by the Selection Committee has been rejected in an unjustified and arbitrary manner. With a view to test the veracity of the submission of the learned counsel for the applicant and to verify the correctness of the facts, we summoned the personal records as well as the confidential reports alongwith the assessment report of the Selection Committee in respect of both the candidates, namely, the applicant and Shri H.S. Batra. We find that the Selection Committee has recommended both the candidates as fit and suitable for promotion to T-9 post. The competent authority though accepted the recommendation of the Selection Committee made in favour of Shri H.S. Batra declined to accept the same in respect of the applicant. The original records produced before us clearly indicate that even Shri H.S. Batra was not having three "very good" entries during the assessment period of five years. He had only two "very good" entries. It is not understandable as to

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under what circumstances, the competent authority has accepted the recommendation made by the Selection Committee in respect of Shri H.S. Batra, even though he did not reach the bench-mark of having secured three "very good" entries. It is thus apparent that the competent authority itself was not following the yardstick as provided in the circular letters that only those candidates, who have secured three "very good" remarks during the assessment period of five years shall be promoted from T-8 to T-9 post. The TSR is silent on the point. In our view, the recommendation made by the Selection Committee could have been rejected by the competent authority only for a very cogent, plausible and valid reasons. It appears that the competent authority had acted in a most arbitrary manner in accepting the recommendation of the Selection Committee in respect of Shri H.S. Batra and declining to accept the same in respect of the applicant. The expert body which comprised of senior officers of the department had recommended after taking into consideration the entire record of the applicant for promotion to T-9 post. Merely on the ground that the applicant did not have three "very good" entries during the assessment period of five years, the recommendation of the Selection Committee in respect of the applicant could not be set at naught by the competent authority particularly when the said parameter has not been applied in respect of the other candidate, Shri H.S. Batra, who has been promoted.

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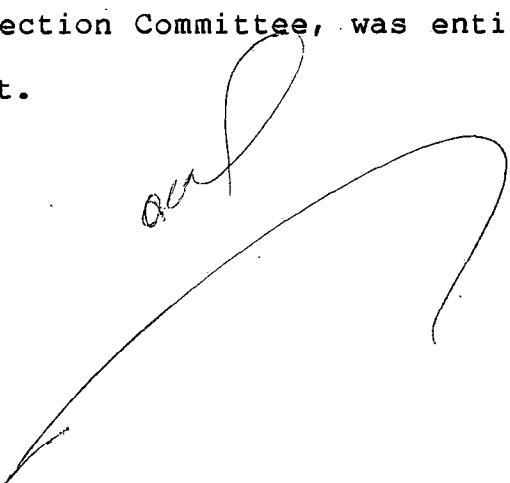
5. Shri V.S. Gurjar, learned counsel for the respondents placed reliance on a decision dated 05.12.97 of the Mumbai Bench of the Central Administrative Tribunal in the case of Manohar D. Lahankar, Assistant Commissioner of Income Tax vs. Union of India and Others, to support his contention that independent of the service Rules, bench-mark or particular yardstick may be provided as supplemental to the Rules to assess the merit of the candidates, whose cases for promotion are under consideration. There can be no quarrel about the proposition of law laid down in the aforesaid decision.

6. In the instant case, the moot point which came up for consideration is whether the two employees working on T-8 post are to be subjected to discrimination for no rhyme or reason or they have to be treated in an even handed manner. The crux of the matter is that the promotion to T-9 post has been denied to the applicant on the specific ground that he did not earn three "very good" remarks during the assessment period of five years. The other candidate, i.e., Shri H.S. Batra, who had only earned two "very good" entries has been promoted. If the yardstick adopted by the respondents in the case of the applicant was sacrosanct enough, in that case, Shri H.S. Batra could not also have been promoted as he was not having three "very good" entries during the assessment period of five years. Recommendation of the Selection Committee was in favour

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of both of them for promotion to T-9 post. Exclusion of the applicant only on a ground which was not applied to another was nothing, but exhibition of blatant arbitrariness on the part of the competent authority. Things would have been different if the recommendation of the Selection Committee in respect of Shri H.S. Batra had also been turned down by the competent authority. It is clearly a case where one of the candidates has been favoured by granting him promotion while the other one has been subjected to hostile discrimination.

7. In the result, we find that the competent authority though has a right to decline to accept the recommendation of the Selection Committee, has acted in an arbitrary manner in accepting the recommendation in respect of Shri H.S. Batra and declining to accept the same in the case of the applicant. Law abhors such a discrimination. The applicant is entitled to equal protection of law. On the ground of glaring discrimination, we are inclined to quash the order dated 12.06.97 (Annexure A/1) taking the view that in the light of the recommendation made by the Selection Committee the applicant was also entitled for promotion to T-9 post. This benefit has been wrongly and unjustifiably withheld by the competent authority. The applicant who is backed with the recommendation of the Selection Committee, was entitled for promotion to T-9 post.

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8. In conclusion, the O.A. succeeds and is allowed without any order as to costs. It is directed that the applicant shall be treated to have been promoted to T-9 post right from the date on which Shri H.S. Batra joined the T-9 post or from the date, a T-9 post became available to the applicant. As regards the consequential benefits, the applicant shall be at liberty to address a representation to the competent authority, which shall receive due consideration according to law.

*Chup*  
(A.P. Nagrath)  
Adm. Member

*O.P. Garg*  
(Justice O.P. Garg)  
Vice Chairman

cvr.