

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 19/11/2001

O.A. No. 183/2000.

Y.P. Sharma R.P.S. Selection Scale (Retired) son of Shri Narain Bhagwan, aged 69 years resident of Narain Towers, C-123 Mangal Marg, Bapu Nagar, Jaipur, Rajasthan.

... APPLICANT.

versus

1. Union of India through the Secretary to the Government, Ministry of Home Affairs, New Delhi.
2. The State of Rajasthan through the Chief Secretary, Government of Rajasthan, Jaipur.
3. The Union of Public Service Commission, Dholpur House, New Delhi through its Secretary.

... RESPONDENTS.

Mr. R. C. Joshi, counsel for the applicant.

Mr. L. N. Biss, counsel for respondent No.1.

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

CORAM

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

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

: O R D E R :

(per Hon'ble Mr. A. P. Nagrath)

This case has had a long arduous journey but the applicant has been pursuing his case with determination even 17 years after his retirement. The case started when the applicant filed a writ petition No. 652/84 in the High Court of judicature of Rajasthan on 21.06.1984 which was transferred to Central Administrative Tribunal, Jaipur Bench and from there back to High Court ; from High Court to Rajasthan Civil



Services Appellate Tribunal and now again back to Central Administrative Tribunal. Initially, when the writ petition was filed in the High Court, the applicant had sought for two reliefs. The first relief was to the effect that the petitioner should have been selected and appointed to the selection scale of Rajasthan Police Service (RPS) on 3.8.78 and should have been confirmed in selection scale of RPS from 22.1.79 i.e. the date on which his juniors were selected and appointed. The second relief claimed by the petitioner was to treat him as selected and appointed by promotion to the Indian Police Service (IPS, for short). The first relief was granted to the applicant consequent to the orders passed by RCSAT on 21.4.1997 by which the Tribunal allowed his appeal. The applicant was promoted in selection scale of RPS against vacancy of the year 1977 on merit quota by order dated 14.10.1997 and he was confirmed in the selection scale of RPS w.e.f. 27.1.79. By the same order, he was placed above Shri S.K. Chaudhary and Shri Bakshu Khan in the seniority list of selection scale of RPS. The order also stated that the applicant Shri Y. P. Sharma was entitled to all consequential benefits. With this order, the first relief claimed by the applicant stood fully granted to him. It appears that by the time the applicant retired from service, he had not been selected and promoted to IPS. The prayer of the applicant in this OA is to direct the respondents to promote the applicant to IPS cadre w.e.f. 26.12.1983, the date his junior Shri S. K. Chaudhary was so promoted, with all consequential benefits of pay, pension etc.



2. The applicant submits that after the judgment passed by RCSAT by its order dated 14.10.1997, by which he was considered fit for promotion against the merit quota and assigned seniority above Shri S.K. Chaudhary, he was obviously entitled for promotion to the IPS from 26.12.1983 i.e. the date on which Shri S. K. Chaudhary was so promoted. The main ground taken by the applicant is that with the judgement of RCSAT, his seniority and merit vis a vis Shri S. K. Chaudhary stood adjudicated finally and that position has also been accepted by the State Government. Under the circumstances, nothing remains, except issuing the notification by the Central Government to promote him to IPS w.e.f. 26.12.1983 and to grant him all consequential benefits.

3. We have heard the learned counsel for the parties. The written submissions have also been filed on behalf of the applicant and respondent No. 2, the State of Rajasthan.

4. Learned counsel for the applicant stated that after the applicant was assigned his due place in the selection scale of RPS, the state Government wrote to the Central Government on 14.6.99, giving full background of the case and requested the Central Government to consider the case of the applicant for promotion to IPS by calling Review selection committee meeting. Learned counsel raised the point that the applicant's case was never considered for treated him as senior to Shri S K Chaudhary by original selection committee or by the Review

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selection committee. Thus, the applicant has been denied his legal rights and due benefits. In support of his contention, the learned counsel referred to the judgment of the High Court of Rajasthan in the case of Sumer Chand Bhandari Vs. State of Rajasthan and Ors. RLR 1987(2) Page 94 and the orders in the case of SS Kotyar Vs. UOI and Ors. RLR 1990(2) Page 491 decided by the High Court of Rajasthan on 6.12.1990.

5. Learned counsel for the respondents submitted that after the State Government referred the matter to the Central Government for reviewing the case of the applicant for selection to IPS, the case was placed before the Review Selection Committee. This Review Selection Committee met on 14.12.1999 and considered the case of the applicant by taking into account all the developments of the case and in compliance with the interim order dated 31.12.1984 of Hon'ble the Rajasthan High Court read with order dated 21.4.97 of Hon'ble the Rajasthan Civil Services Appellate Tribunal. The review committee however did not recommend any change in the select list prepared earlier on 28.1.82 for promotion of RPS officers to IPS Cadre of Rajasthan. Learned counsel for respondent No. 1 placed before us a copy of the proceedings of the review selection committee which met on 14.12.1999 to review the case of the applicant.

6. Learned counsel for the State Government, while referring to the judicial verdict of the RCSAT stated that the same was in the context of promotion of the applicant to



selection scale of RPS against the vacancies of 1977 and that did not mean that after this judicial verdict, the applicant has acquired an automatic right to be promoted to IPS. While dwelling on the procedure followed by the selection committee, learned counsel submitted that the function of qualifying the state service officers eligible for consideration for promotion to IPS has been entrusted to the selection committee comprising of very senior officers and the procedure followed is governed by Statutory Provisions of Promotion Regulations, which have been made pursuant to Rule 9(5) of the IPS (Recruitment) Rules, 1954. These have been made by the Central Government in exercise of the powers conferred by Section 3(1) of A.I.S Act, 1951. He further mentioned that the Scheme for promotion to the IPS has come up for consideration before the Apex Court in a number of cases. Scheme for promotion to IPS has been summarised by Hon'ble the Supreme Court in Sayeed Khalid Rijvi Vs. UOI & Ors. reported in 1993(1) SLR 89. It has been taken note of by the Supreme Court that the Selection Committee considers the eligibility and suitability of the members of the State Police Service on the basis of merit, ability, suitability and the overall assessment is based on their AFARS and Service record. Regarding the judicial view taken of the procedure for making an overall assessment by the selection committee, the learned counsel placed reliance on the following cases :-

(a) R.S. Das vs. Union of India -1986 (4) SLR 75.

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(b) U.P.S.C. Vs. Shri Hiranya Lal Dev-1988 (2) SLR 148.

(c) Eaidyanath Sinha Roy Vs. Union of India & Ors-(1995) 29 ATC 728.

(d) Dr. H.L. Frajapati vs. Union of India & Os. -1991 (2) SLJ (CAT)

(e) G. S. Narayana Swamy & Ors. vs. Union of India & Ors. -1995 (3) SLJ (CAT) 472.

7. It has further been emphasised by the respondents that the scope of judicial review of such proceedings of the selection committee is very limited and that the courts and tribunals cannot sit in appeal over the assessment made by the selection committee. For this, the respondents have cited the following cases :-

(i) Badri Nath vs. Govt. of Tamilnadu-2001 SCC(LS) 13- (Pages 38-41).

(ii) Smt. Nutan Arvind Vs. Union of India & Ors-1996(1) SLR 774 (SC).

(iii) S.L. Swamy vs. State of M.P. 1995(2) SLR 1706.

8. The scope of the Review Selection Committee has been described in DOPT's OM No. 22011/5/86-Ett.(D) dated 10.4.1989, according to which a Review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should neither change the grading of an officer without any valid reason (which would be recorded) nor change the zone of consideration nor take into account any increase in the number of vacancies which might have occurred subsequently. The respondents have stated that only change which was occurred in the instant case is that when the selection committee met in 1983, the applicant was placed



at Sr. No. 10 in the zone of consideration and whereas in the meeting of the review selection committee held on 14.12.99, he was placed at Sr. No. 4-A above Shri S.K. Chaudhary. This placement, the respondents contend, will not affect the grading which had already been given to the applicant by the selection committee which met in 1992. His case had duly and properly, been considered by the selection committee in 1992 and again by the review selection committee in 1999. With this background, the respondents assert that the applicant has no case as review selection committee did not recommend his case for promotion to IPS.

9. We have perused the entire record produced before us including the written submissions and carefully considered the argument advanced by either side. We have also perused the proceedings of the Review Selection Committee.

11. A large number of pronouncements have been referred to by the respondents, primarily to establish that the Selection Committee has to assess the State Service Officers not only as per the assessment made in APARS but also on the basis of overall service records. This stand is not in dispute by other side as it is abundantly clear even from the judgment of RCSAT where the relief itself has been granted to the applicant for promotion to selection scale of RPS post based on his service records. The unfortunate happening in this case is that APARS of the applicant had been destroyed by the Home department even while the legal proceedings initiated by the applicant were

pending. The State Appellate Tribunal had taken a serious view of this lapse and we can only add our own voice to express our dismay at the negligent act of the concerned functionaries of the Home department. The case before the RCSAT was decided, in absence of the APARs but taking note of the service record of the applicant including the distinguished service rendered by him and the various honours received by him. So, the dispute is not whether the entire service record of the applicant has to be taken into account or assessment is to be made solely on APARs. We are also cognizant of the scope of the judicial review of the proceedings of the selection committee. We have perused the minutes of the meeting of the review selection committee which met on 14.12.1999 and we find that the committee had taken full and complete note of the orders which emanated in this case in various stages when the case passed from Rajasthan High Court to Central Administrative Tribunal and back to Rajasthan High Court and to RCSAT. The committee has fully considered the interim orders of Hon'ble the Rajasthan High Court dated 31.07.1984 and the orders of RCSAT dated 21.4.97 by which the applicant was granted relief of promotion to selection scale of RPS on merit against the 137 vacancies. The committee has taken a specific note of the interim orders dated 31.07.1984 of Hon'ble the Rajasthan High Court. We have extracted the same from the minutes and which are reproduced as under :-

"The main Writ Petition would be linked for orders as case No.1, on 3rd September, 1984. The fact that the



petitioner retires today from the R.P.S. will not be a bar, to his selection as I.P.S. In case, the writ petition is allowed the respondents will consider his case for promotion to L.P.S. in accordance with the direction given by this court without objecting that he has retired from the R.P.S.'

11. The committee has also taken due note of the fact that the ACAR dossier of the applicant have been destroyed and that in absence of this dossier, RCSAT have examined the entire available service records of Shri Y.P. Sharma and on that basis he was found suitable for promotion to the selection scale of RPS against the vacancies of the year 1977 on merit with all consequential benefits. The proceedings of the selection committee which met on 21.8.1982 were available before the Review Committee. We consider it relevant to reproduce the conclusions of the Review Committee as that decides the issue : -

"10. The Committee noted that the grading of Shri Y.P. Sharma for the year 1982 given by the Selection Committee which met on 28.1.1982 is available. That Selection Committee on the basis of the record available had graded him as "Good". The Committee also noted that only those officers who were graded as "very good" were included in the Select List of 1983. CR Dossier of Shri Y.P. Sharma is not available at present. Hence the Review Selection Committee accepted the overall assessment made by the Selection Committee which met on 28th January 1982. On the basis of this grading the Review Selection Committee do not recommend any change in the select list prepared on 28th January, 1982 for promotion to IFS cadre of Rajasthan."

12. The question which arises is, should the Review Committee have graded the applicant differently from the



assessment made by the selection committee which met on 21.8.1982 because of the observations of the RCSAT regarding the service record of the applicant and the orders passed thereon. We have given our anxious consideration to this aspect of the case and we have very closely gone through the observations of RCSAT in respect of the service record of the applicant. After expressing their anguish about the destruction of the AFARs of the applicant by the home department, it has been observed.

" In the absence of the APA reports, we have no option other than examining the entire available service record of the appellant to consider his promotion. In the memo of his writ petition the appellant has given details of the appreciation letters and commendation certificates issued to him from time to time by his controlling officers. He has also referred to the Award of the President's Police Medal and the Samar Sewa Star given to him in 1969. In their reply to the writ petition the respondents have gone through the motion of denying the contents of the concerned paragraphs in general terms, but have not made any specific plea regarding the various appreciation letters and Awards listed by the appellant. In the absence of the APAR's the record by the appellant acquires vital significance and needs to be examined in greater details.

In para 17 of the writ petition, the appellant has elaborated the appreciation letters and Awards etc. given to him on 25th July, 1978, the Commissioner Department of Home Affairs has conveyed the approval of the Government for the



nomination of the appellant to assist the prestigious Beri Commission on account of his being " a police officer of proven integrity and efficiency". Copies of commendation certificates given to him by the Inspector General of Police and other senior officers for solving complexe cases of dacoity, for exemplary work during Elections, for services rendered in organising Rajasthan Police Sport & Cultural Meet, for the excellent work in organising VIP visits etc. have also been produced by the appellant."

12. In addition to this, the State Tribunal had also taken into account the excerpt from a letter written by the local MLA to the Superintendent of Police, Alwar, paying glowing compliments to the act of bravery, courage and commitment to service displayed by the applicant in a serious case of fire. Because of such record and that the applicant had been awarded President's Police Medal for meritorious service in the year 1969 and also awarded "Samar Sewa Star" in 1969, the Tribunal considered him as meritorious and fit for being promoted to the selection scale of RPS on merit basis.

13. While all these achievements of the applicant are highly praised worthy, could they form the basis for the review committee to recommend his case for promotion to IPS. It is very relevant to note that the matter before RCEAT was promotion of the applicant to selection scale of RPS against vacancies of the year 1977. This means that APARs' and the



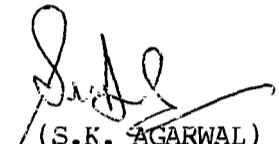
service record of the preceding 7 years was to be reckoned. The achievements of the applicant relate to the period before 1977 and the President's Medal and Samar Seva Star were given to him in 1969. There could not be a presumption that an officer adjudged to be brilliant and bright shall continue to so adjudged throughout his career. This would all depend on how one performs his duties and displays commitment to service from year to year basis. For the purpose of promotion to IPS, the selection committee was called upon to see the record of the State Police Officers or the preceding 5 years. Unfortunately, AFARs' of that period are missing and there is nothing brought on record even by the applicant himself to show that even after 1977 up to 1982 his service record was equally bright as it was prior to 1977. We have reasons to believe that the selection committee which met in 1982 had complete access to the AFAR and service records of the applicant. On the basis of these records, the committee assessed him as 'Good'. The officers who had been recommended to be promoted to IPS, all have been assessed as 'Very Good'. It is not the case of the applicant that his juniors who were promoted to IPS were also graded only as 'Good'. The review committee had no basis or reason to make any change in the grading of the officer. The only change before this committee was that the seniority position position had been changed from No. 10 to No. 4-A i.e. above Shri S. K. Choudhary. However, this change in seniority would not make any difference in view of the fact that the applicant had only been graded as 'Good'. It does not lie with the Courts & Tribunals to interfere in the assessment made by the Selection Committee, as per the principle laid down by Hon'ble the Supreme Court in the



case of Badri Nath Vs. State of Tamil Nadu. Under the circumstances, we are unable to accept the plea of the applicant and to grant him any relief.

13. We, therefore, dismiss this OA but under the circumstances of the case no order as to costs.

(A.P. NAGRATH)
Adm. Member


(S.K. AGARWAL)
Judl. Member

Joshi