

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 434/2000
TAX No. XXXX
XXXXXX

199

DATE OF DECISION 19.11.2001

Rajesh Kumar Sood Petitioner

Mr. S.P. Sharma Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

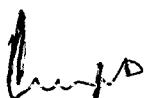
Mr. Sanjay Pareek & Mr. U.P. Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K. AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. A.P. NAGRATH, ADMINISTRATIVE MEMBER

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


(A.P. NAGRATH)

Member (A)


(S.K. AGARWAL)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 19.11.2001

OA No.434/2000

Rajesh Kumar Sood aged about 54 years son of Shri B.P.Sood
r/o C-363, Malviya Nagar, Jaipur presently working as
Addl. S.P., A.C.B.

..Applicant

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi.
2. Union Public Service Commission through its Secretary, Dholpur House, New Delhi.
3. State of Rajasthan through Secretary, Department of Personnel, Secretariat, Jaipur
4. Principal Secretary, Home Department, Govt. of Rajasthan, Secretariat, Jaipur
5. Shri Gajanand, Dy. Secretary, Home Department, Secretariat, Jaipur.
6. Shri S.P.Khargawat
7. Shri Murad Ali Abra
8. Shri Shiv Prasad Sharma
All through Director General of Police, Rajasthan, Jaipur

.. Respondents

Mr. S.P.Sharma, counsel for the applicant

Mr. Sanjay Pareek, counsel for the respondents No. 1 & 2

Mr. U.D.Sharma, counsel for respondents No. 3,4 and 5

CORAM:

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

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



ORDER

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

The applicant is a Member of the Rajasthan Police Service (for short 'RPS'), who is aspiring to be appointed in Indian Police Service and presently he is in Super Time Scale (S.T.S.) of RPS. The Government of India, Ministry of Home Affairs, issued a Notification dated 12.9.2000 (Annex. A1) and appointed 25 members of RPS to Indian Police Service (for short 'IPS'). The applicant is aggrieved with this Notification dated 12.9.2000, on the ground that the same includes officers at Sl.Nos. 1 and 8 to 25, who were all juniors to the applicant but the applicant's name does not find mention in the list. Three of such junior persons have been made as party respondents.

2. The uncontroversial factual matrix of the case is that the applicant was promoted in the selection scale on merit basis against the vacancies of 1988-89. This was subsequently changed by a Review D.P.C. by placing him in this selection scale in the year 1993-94. The applicant challenged the aforesaid action by filing an appeal before the Rajasthan Civil Services Appellate Tribunal (for short 'RCSAT'), and his application was allowed vide an order dated 18.6.1999. Against this order, the State Government filed a Writ Petition 5263/1999 which was dismissed on 28.10.1999. A further appeal (D.E.C.Special Appeal No. 967/1999), was dismissed on 10.5.2000 and in their order the Hon'ble High Court of Rajasthan had held that , once he (the applicant), has been shown promoted by a duly constituted D.P.C. his case could not have been reviewed while deciding the case of Shri Pandhir Singh, wherein, the non petitioner (i.e. the applicant), was not a party and no adverse order could have been passed against him. By their order the Division Bench of the High Court up held the order of the RCSAT and the order of the learned Single Judge restoring the position of the applicant to the year 1988-89. In the said order Hon'ble the High



Court had also observed that the applicant had outstanding records of the previous years. He was selected in merit quota and was allotted the year 1988-89. By down grading him from 'Outstanding' to 'Good' for one year without giving any reason does attract the dictum as laid down by Hon'ble the Supreme Court in U.P.Jal Nigam's case.

3. The other related undisputed facts are that by Notifications dated 5.8.1997 and 24.8.1998, 28 officers were promoted to IPS from RPS under the Indian Police Service (Appointment by Promotion), Regulations, 1955 (herein after referred to as 'the Regulations of 1955'). Subsequently, because of the orders passed in O.A.No. 247 of 1998 and the Civil Appeals No. 3417 to 3450 of 1998 filed by the State of Rajasthan Vs. B.K.Sharma and the orders of the Apex Court in Ajeet Singh Juneja -II, it became necessary to revise the seniority list of RPS Officers. This also necessitated de-notifying the promotions ordered earlier vide Notifications dated 5.8.97 and 24.8.98. The Denotification order was issued on 27.4.2000 and all the officers promoted earlier, were reverted. A fresh seniority list was prepared by the State Government on 14.6.2000. In pursuance to the directions given by Hon'ble the Rajasthan High Court, a review selection committee was convened under regulation 3 of the Regulations of 1955 and this review committee met on 25 and 26th of July, 2000. This selection committee reviewed the selection list of the years 1990-91 for promotion of RPS officers to IPS. ^{to 98} L Consequent to acceptance of the recommendation of this selection committee, the impugned notification has been issued.

4. As per the averments in the O.A., the applicant has stated that he had an apprehension that his ACR of the year 1990 ⁻⁹¹ was missing, therefore, he filed an appeal before the PCSAT with a prayer for an interim order which was passed on 24.7.2000. The said order was faxed to the selection board which met for making recommendations for promotion to IPS on 25.7.2000. The applicant has also alleged bias on the part of Chief Secretary,



Rajasthan, for the reason that in a Contempt Petition No. 379/1999 before the High Court of Rajasthan he had impleaded the said Chief Secretary as well as the Secretary (Home), as contemners in person. He alleges that because of this, the Chief Secretary and the Secretary, Ministry of Home Affairs were very much incensed and angered. In this back ground, the applicant alleges that his record has not been fairly assessed by the selection board. The applicant further alleges that only 5 to 7 years record of service has been taken into consideration without considering the record yearwise and the meritorious officers like the applicant, have been left-out. He has stated that in his case the judgement of Hon'ble the High Court dated 10.5.2000 has also not been taken into consideration and the orders of the RCSAT dated 24.7.2000 have also been overlooked. According to the applicant the officers who were inducted in IPS by the impugned notification did not possess outstanding, or very good record of service for seven years consistently and, therefore, they could not be promoted on merit basis in selection scale of IPS for example; Shri S.P.Karnawat, was promoted in selection scale of IPS on seniority-cum-merit basis only for 1989-90 and Shri Murad Ali Atra was promoted on seniority-cum-merit basis in 1990-91 while Shri Shit Prashad was promoted in 1991-92 on seniority - cum - merit basis. He claims that he was promoted on merit basis but despite this fact, he has been ignored in the notification dated 12.9.2000 and persons having less meritorious records, have been given promotion.

5. The applicant has also alleged bias against Shri Gajanand, Dy. Secretary Home Department, who has been impleaded as respondent No.5, for the reason that Shri Gajanand has been trying to spoil applicant's career although and has earlier on two occasions caused hinderence in getting justice to the applicant.

6. A reply has been filed on behalf of respondents No. 3 and 4 (Government of Rajasthan), in which an objection has been raised against the O.A. on the ground of non-joinder of necessary parties. The applicant has stated that many persons junior to the applicant, have been promoted by the impugned notification, but he has impleaded only three officers as



respondents No. 6, 7 and 8. It has been said that it was necessary for all the officers whose interests ~~may~~ be affected adversely, to have been impleaded as necessary parties. On merits, the Government of Rajasthan stated that pursuant to the various judicial orders, the seniority list was recast and issued on 14.6.2000 for the years 1990-91 to 1998 which forms the basis of determining the zone of consideration of the RPS officers for promotion to IPS. They have asserted that the applicant's name has been included in the aforesaid seniority list and applicant came in the zone of consideration for promotion to IPS cadre for the years 1991-98. The select list from 1990^{to} 1996-97 has been prepared yearwise in accordance with the provisions of Regulation 5 (1) of the Regulations of 1955 and for the year 1998 in accordance with the promotion regulations as amended vide Notification dated 31.12.1997. The zone of consideration has been determined in respect of the vacancies for the relevant years and the selection committee has examined the service records of the officers coming in the zone of consideration for a particular year on an over-all assessment of their service records up to the period for which the particular select list was prepared. It has been stated that the case of the applicant was properly and fairly considered by the selection committee but as per the assessment of the committee, he was not recommended in any of the select lists for the year 1990-91 to 1998. The said select list has been approved by the Union Public Service Commissioner (UPSC), vide letter dated 6.9.2000. Regarding the allegation ^{of bias} Shri Gajanand, Deputy Secretary, Home Department, State of Rajasthan, has stated that the entire process for selection to an all india service from the officers of the State service is undertaken by the Department of Personnel and the Deputy Secretary, Home Department, has no role to play. On the apprehension of the applicant i.e. ACR for one year i.e. 1990-91 has not been placed before the selection committee, the respondents have termed this apprehension as unwarranted and have asserted that his entire service record including his all ACRs for various years had been placed before the selection committee.



7. Reply has also been filed on behalf of respondent Nos. 1 and 2, Ministry of Home Affairs and U.P.S.C. In their reply the respondent No. 2 had stated that selection of State Police Service Officers for promotion to IPS are governed by the Regulations of 1955 and Regulation 3 of the said Regulations provides for a selection committee consisting of the Chairman, UPSC or when the Chairman is unable to attend, any other Member of the UPSC will be there. In respect of the State of Rajasthan, the following officers are the Members :-

- i) Chief Secretary to Government of Rajasthan.
- ii) Secretary-in-charge of Home Deptt., Govt. of Rajasthan.
- iii) D.G.P. & I.G.P., Govt. of Rajasthan.
- iv) A member of the service not below the rank of DIG of police.
- v) A nominee of the Government of India not below the rank of Joint Secretary.

The meeting of the selection committee is presided over by the Chairman, Member of the UPSC. It is submitted on behalf of the respondent No. 3 that in accordance with the provisions of Regulation 5(4) of the said Regulations, the aforesaid Committee duly classifies the eligible State officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5 (5) of the said Regulation, the Selection Committee prepares a list by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category is maintained in the order of their respective seniority in the State Police Service. It is further stated that the ACRs of eligible officers are the basic inputs on the basis on which eligible officers are categorised as 'Outstanding', 'Very Good', 'Good' and 'Unfit' in accordance with the provisions of Regulation 5(4) of the Promotion Regulations. The Selection Committee is not guided merely by the overall



grading that may be recorded in the ACRs but in order to ensure justice, equity and fair play makes its own assessment on the basis of in-depth examination of service records of eligible officers, deliberating on the quality of the officer on the basis of performance as reflected under various columns recorded by the Reporting/Reviewing Officer/Accepting Authority in ACRs for different years and then finally arrives at the classification to be assigned to each eligible officer in accordance with provisions of the Regulations. While making overall assessment, the Selection Committee takes into account orders regarding appreciation of meritorious work done by the concerned officer. Similarly, the selection committee also keeps in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation have not been completely expunged. The respondent No. 2 has also referred to the judgements/observations of the Hon'ble Supreme Court in number of cases to contend that in view of the authoritative pronouncements of Hon'ble the Supreme Court the assessment made by the selection committee consisted under Regulation 3 of the promotion regulations is not open for scrutiny by any authority/institution or an individual.

8. Regarding the case of the applicant, it has been stated that a meeting of the review selection committee was held on 25 and 26th of July, 2000 to review the select list for the years 1990-91 in pursuance of the directions of the Hon'ble High Court of Rajasthan in their orders dated 2.4.1998 and 3.3.2000 in Writ Petition No. 2912 of 1996 B.K.Sharma and others Vs. State of Rajasthan and Ors. and the Contempt Petition No. 379/1999 filed by Shri R.K.Sood and Others Vs. State of Rajasthan and Others. The Government of India had denotified 28 RPS officers appointed to IPS cadre of Rajasthan out of the select list of 1990-91 to 1998 vide their Notification dated 27.4.2000 in compliance of the directions of the Hon'ble High Court of Rajasthan in their interim order dated 3.3.2000 in



the Contempt Petition No. 379 of 1999. The seniority list of RPS officers was also revised by the State Government as per the directions of the Hon'ble High Court. The Review Selection Committee, therefore, met on 25th and 26th of July, 2000, to review the select list of 1990-91 to 1998 and prepared a fresh select list on the basis of the revised seniority furnished by the State Government. The conclusion arrived at by the review selection committee in respect of the applicant is reproduced as under :-

Year	Position in the eligibility list	Grading	Position in the Select list
1993-94	Sl.No.3	Good	Not included
1994-95	Sl.No. 2	Good	Not included
1995-96	No Select List prepared as no Selection Committee meeting had been held.		
1996-97	Sl.No.2	Good	Not included
1998	Sl.No.3	Good	Not included

It has been submitted by the respondents that the review committee had considered the case of the applicant as per the revised seniority position and on the basis of an overall assessment of his service records, he was assessed as 'Good' for all the years. However, he could not be included in any of the select list due to his lower grading and due to the statutory limit on the size of the respective select lists. In response to the apprehension of the applicant that his ACRs were not fairly considered and that, the order dated 24.7.2000 of RCSAT was not taken into account the respondents have discussed the procedure at length and the same has been extracted below from the reply.

""7.2.1 It is respectfully submitted that Regulation 5(4) of the IPS (Appointment by Promotion) Regulation 1956 provides that the Selection Committee shall classify the eligible officers as 'Outstanding' 'Very Good', 'Good' or 'Unfit' , as the case may be on "an overall relative assessment of their service records. For making an overall relative assessment, the Selection Committee as per practice followed in the Union Public Service Committee examines the service records of each of the eligible officers, with special reference to



the performance of the officers during the last five years (preceding the year in which the Selection committee meets), deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then after a detailed mutual deliberation and equitous discussions finally arrives at a classification to be assigned to each other. The Selection Committee takes into account orders regarding appreciation for the meritorious work done by the officers concerned and also keeps in view orders awarding penalties or any adverse remarks duly communicated to the officer which, even after due consideration of his representation by suitable forum are not expunged. It is further submitted that the Selection Committees are not merely guided by the overall gradings recorded in the ACRs by the Reporting/Reviewing Officers/Accepting authority but in order to ensure justice, equity and fair play makes its own assessment of officers on the basis of indepth examination of their service records and performance as reflected under various columns of ACRs. While doing so, the Selection Committee also reviews and determines the overall grading recorded in the ACRs to ensure that the overall grading in the ACRs is not inconsistent with the grading / remarks under various parameters or attributes.

7.2.2 In some cases, the ACRs of an officer may not be written for a year or more on account of his being on leave, training or because no officer supervised his work for more than three months or on any other ground. As the overall assessment of the officer cannot be withheld because of that period, the Selection Committee makes a categorisation on the basis of ACRs made available to it by the State Government.

7.2.3 The Selection Committee which met on 25th & 26th July, 2000 assessed the applicant on the basis of available ACRs. As per uniform practice followed by the Selection Committees, if an ACR is missing, being not available/written, the ACR of the preceding year of the 5 year block is taken into consideration to complete the period of 5 years. The applicant was considered for the year 1993-94 to 1998 and his ACRs for the respective 5 years were taken into account. As the ACR of the 1990-91 was not available, his ACRs of the respective previous year was taken into account to complete the 5 year period.



7.2.4 The order dated 24.7.2000 of the Hon'ble Rajasthan Civil Services Appellate Tribunal referred to in the OA was relating to writing of ACRs. The Review Selection Committee assessed the ACRs of eligible officers as per the records placed before the Selection Committee by the State Govt. The Review Committee have made assessment of the ACRs of the applicant and other eligible officers as per the uniform practice and guidelines followed by the Commission in respect of making selections for promotion to IAS/IFS/IFS for all the State Cadres."

In regard to the applicant's second apprehension that his record was not fairly assessed by the Board, it has been stated by the respondent No. 2 as under :-

"7.3 It is submitted that the Selection Committee is constituted under Regulation 3 of IPS Promotion Regulations. The Selection Committee consists of very high ranking officers of merit and objectivity. The recommendations of the Selection Committee reflect the opinion of all the Members of the Selection Committee and not of any individual Member. The apprehension of the applicant that the contempt petition filed by him against some Members of the Selection Committee might have affected the assessment of his records does not carry any weight, as the Selection Committee presided over by Chairman/Member of UPSC is an impartial body statutorily setup for the purpose of making recommendations/selections and the selections made by the Selection Committee are on the basis of overall assessment of service records of the eligible officers in a fair, just and equitable manner, in accordance with the prescribed rules and regulations whose validity has been upheld in various court decisions as enumerated at paras 4.4 to 4.8. In view of this, it is submitted that the contention made by the applicant are without any basis, misleading and malacious in nature."

9. The applicant has also filed a rejoinder to the reply filed by the respondent No. 2, UPSC and has challenged the stand of the UPSC that the selection proceedings and the assessment made, cannot be questioned. He has raised questions on the very criteria of placing the officers in different categories (Very Good, Good and Unfit) on the ground that the same leaves room for arbitrariness and has said that the contention of the respondents that selection committee makes its own assessment by deliberating on the quality of the officer under various norms recorded by the reporting/reviewing officer/ accepting authority, as illegal and unjustified. His plea is that if the selection committee is allowed to



make assessment on the various columns of the ACRs much scope of arbitrariness would enter into the selection and there could be a scope for maneuvering inasmuch as any officer in whom any member of the selection committee is interested may be assessed as Very Good inspite of the fact that he has received only Good/Average ACRs during his entire life. Another ground raised by the applicant in the rejoinder is that the selection committee have recommended such of the persons who during the service remained suspended and who were later on exonerated on the ground that their part in the embazlement was held to be beyond supervisory negligence only. On the procedure followed by the selection committee of making an overall assessment based on the service records of five years period, the applicant contends that atleast seven years ACRs should have been looked into for the period immediately preceding the year of selection and that selection committee should not have confined itself to only five years ACRs.

(1) 10. In the rejoinder to the reply of the State of Rajasthan, the applicant while referring to the reply filed by the UPSC, has stated that his case has not been considered for the select list of the year 1990-91, 1991-92 and 1992-93 and his case has been considered only for the vacancies of 1993-94 onwards. He has assailed the action of the respondents in not considering the case from the year 1988-89 onwards upto 1993-94. During the pendency of this O.A. the applicant filed a copy of the order of the RCSAT dated 10.1.2001 the same has been taken on record as per the order dated 19.1.2001. A reply to the rejoinder of the applicant, has also been filed by the UPSC in which mainly on the question of considering the records of the previous years, has been explained and stated that no specific period has been mentioned in the promotion regulations to make an overall assessment of the officers in the zone of consideration. The Regulation 5 of the IPS Promotion Regulations only provides for classifying the eligible officers on an overall relative assessment of their service records. As it may not/feasible to look into the service records for all the years of service, the Commission have adopted a uniform practice to consider and lay emphasis on the records of the preceding five years. It has also been further clarified that the review selection committee accepts



the assessments made by the previous selection committee if the officers were duly considered by the previous selection committee for the same year and there was no change in the records since placed before the previous selection committee.

11. The respondents have also placed before us the ACR Dossiers of the applicant as also the proceedings of the review selection committee which met on 25th and 26th of July, 2000 .

12. Very elaborate arguments were led by the learned counsel for the applicant Shri S.P.Sharma. The written arguments and the list of cases in support of the submissions made on behalf of the applicant, have also been filed. From the respondents No. 3 and 4 also, written brief with judicial citations has been filed. The main thrust of the arguments of the learned counsel for the applicant was that the applicant's case for promotion to IPS has not been fairly considered and service record of the applicant which had already been assessed judicially by the RCSAT and by Hon'ble the High Court in both Single as well as Division Bench, has been overlooked by the selection committee. The learned counsel referred to the order of the RCSAT. In its judgement dated 18.6.1999 the Tribunal had given a factual finding that the service record of the applicant was outstanding / very good and the applicant was held to be a meritorious officer and entitled to be declared promoted for the year 1986-89 in the RPS selection scale. Thus, the learned counsel contended that the service record of the applicant upto 1987-88 was already held by the Court to be Outstanding/ Very Good. In that view, the learned counsel contended that when the selection board considered the case of eligible officers for the year 1991, the applicant's name ought to have found place therein. There was only one intermediary ACR of 1988-89 which was of satisfactory nature. In the learned counsel's view the respondents had committed illegality by overlooking the judgement passed by the Hon'ble High Court and the Tribunal



in favour of the applicant. Similarly, for the same reasons the applicant less than could not have been assessed as Very Good for the years 1991-92, 1992-93, 1993-94 and 1994-95. The plea of the learned counsel was that once the findings have been given on the grading of the officer in the ACR, there was no reason for the selection committee to make an overall assessment of the applicant different from the assessment made by the accepting authority in the ACRs or the finding of the High Court or the Tribunal.

By this procedure, the learned counsel contended that even those officers who were not found meritorious by the State DPC for promotion to FPPS selection scale, have been selected for IPS while the applicant, who was considered more meritorious for the FPPS selection scale, has been ignored. On the alleged bias on the part of the Chief Secretary and the Secretary (Home), the learned counsel stated that there was a reasonable ground for apprehension of bias because these officers were compelled to de-notify the promotions made earlier pending the Contempt Petition filed by the applicant. Because of this, applicant's case was deliberately not considered by the selection committee and no comparative assessment was made. The learned counsel attacked the entire exercise of selection for the reason that it lacks the basic requirement of making a comparative assessment of the officers. For this, the learned counsel also referred to the reply of the UPSC wherein in para No. 7.4.3, it has been stated that the review committee accepted the assessment made by the previous selection committee, if the officers were duly considered by the previous selection committee for the same year and there was no change in the records since placed before the previous selection committee. Thus, the learned counsel contended that the proceedings of the selection board are vitiated as there has been no comparative assessment between the service records of the applicant vis-a-vis the private respondents and other junior officers who had been selected earlier. The learned counsel also reiterated the ground taken in the rejoinder that the selection board should have made an assessment on the basis of seven years record and not on the basis of five years service records only. For this, the learned counsel referred to the case of Shambhu Singh Meena Vs. State of Rajasthan reported in 1995 Suppl

(2) SCC 431. Regarding the importance of ACPs in a selection process the learned counsel has placed reliance on the following case laws :-

1. 1984 - (1) SLR 470 - Amar Pant Chaudhary Vs. State of Bihar.
2. 1997 (4) SCC 7 - State of UP Vs. Yamuna Shankar Mishra and Anr.
3. 1996 (2) SCC 363 - UP Jal Nigham Vs. Prabhat Chand Jain

On the question of the scope of interference by the Courts in the matters of promotion/selection, the learned counsel cited the case of Badri Nath Vs. Government of Tamil Nadu reported in 2000 (8) SCC 395 and argued that where there was a likelihood of bias, the Courts/Tribunals could certainly interfere in the matter.

13. The learned counsel vehemently ~~emphasis~~^{ed} that the selection committee had no discretion to disregard the assessment made by the competent officers in the ACPs or the findings given by the Hon'ble High Court or the Tribunal on the grading of the applicant and stated that the selection committee could not have substituted their own findings regarding overall assessment of the candidates. In support of this argument, the learned counsel cited the case reported in 1998 SC 331 Arun Tewari and Ors. Vs. Zila Mansavi Shikshak Sangh and Ors. and 1984 (4) SCC 251 Pramod Verma Vs. State of U.P.

14. The learned counsel also contended that the seniority position of the applicant has further undergone a change during the pendency of this O.A. He referred to the order of ECSAT dated 10.1.2001 which has been taken on record of the case as Annex.A/13 by which the appeal of the applicant has been allowed by the Tribunal by giving a categorical finding that the ACP for the year 1990-91 is to be treated as Very Good and the applicant was entitled to be selected in 1996-97 as Super Time Scale PPS Officer on merit basis and place above Shri Liyakat Ali in the seniority list showing position as on 1.4.1997. In view of this development, the learned counsel



submitted that the applicant's name is required to be reconsidered by the selection committee vis-a-vis the persons junior to him.

15. The learned counsel for the State of Rajasthan Shri U.D.Sharma, and the learned counsel for the UPSC Shri Sanjay Pareek, developed their arguments on the lines of their stand taken in the written replies. On the point of judicial verdict of the Hon'ble High Court and Tribunal in respect of the ACRs of the applicant, the learned counsel for the State of Rajasthan stated that this verdict has to be understood in the context in which the same was made. The matter before the State Tribunal and the Hon'ble High Court was limited to his promotion in the selection scale of RPS on merit basis and not on the basis of seniority-cum-merit basis. The said decision is, therefore, applicable only to the aforesaid case as the State Tribunal as also the Hon'ble High Court had no occasion to consider the question of assessment of the applicant for promotion to IPS cadre in accordance with the provisions of Regulation 5 (4) of the Regulations. The said assessment cannot be made applicable and cannot be substituted as an assessment made under regulation 5 (4) of the Regulations. ~~The learned counsel submitted that~~ In the written brief filed on behalf of the State of Rajasthan, it has been submitted that the scheme of promotion to the IPS came up for consideration before the Hon'ble High Court in Sayeed Khalid Rizvi Vs. UOI & Others, reported in 1993 (1) SLR 989 and the procedure of classifying the eligible officers as, 'Outstanding,' 'Very Good,' 'Good' or 'Unfit' on an overall assessment of their service records, was upheld. Reliance has been placed on the case of R.S.Das Vs. UOI & Ors. reported in 1986 (4) SLR 75, U.P.S.C. Vs. Shri Hiranya Lal Dev reported in 1988 (2) SLR 148, Baidyanath Sinha Roy Vs. UOI & Ors. reported in (1995) 29 ATC 723, Dr. H.L.Prajapati Vs. UOI & Ors, reported in 1991 (2) SLJ (CAT) 282 and G.S.Marayana Swamy & Ors. Vs. UOI & Ors. reported in 1995 (3) SLJ (CAT) 472, in support of the procedure adopted by the selection committee to classify the officers as Outstanding, Very Good, Good and Unfit, by taking into account not only the



grading of the officers given by the reporting and the reviewing officers but also taking into consideration the other factors as could be revealed from the ACRs as a whole and with particular reference to ACP records of the recent years. It has been emphasized by the respondents that the manner and the method of assessment by ~~by~~ such selection committee has been /considered by the Apex Court in various cases and the procedure adopted has been invariably upheld. On the scope of judicial review, respondents have placed reliance on the following cases :-

- (i) Badri Nath Vs. Government of Tamilnadu, reported in 2001 SCC (L&S) 13.
- (ii) Smt. Nutan Arvind Vs. UOI & Ors. reported in 1996 (1) SLR 774 (SC).
- (iii) S.L. Swamy Vs. State of M.P. reported in 1995 (2) SLR 1706.

The respondents have raised an objection for giving any cognizance to re-determination of seniority or grant of the Super Time Scale to the RPS against the vacancies of 1996-97 for the purpose of this selection. This stand has been taken on the ground that the seniority has been re-determined on the basis of the order of the State Tribunal passed on 10.1.2001 whereas, the meeting of the selection committee was held on 25.7.2001 and 26.7.2000 and there could have been no question of taking into account redetermined seniority of the applicant. Since this point could not have been urged in the O.A., there was no opportunity for the respondents to controvert the same at the time of arguments. For this reason, the respondents stressed that applicant should not be allowed to raise this new plea.

16. We have given our anxious consideration to the rival contentions. We have perused the entire records brought before us, not only in the O.A., reply, rejoinder but also written brief submitted on behalf of the parties. We have also perused the ACR Dossiers and the proceedings of the selection committee which met on 25 and 26th July, 2000.

8

In P.S.Das Vs. UOI & Ors. 1986 (4) SLR 75 - it has been observed as under :-

"The machinery designed for preparation of the Select-list under the Regulations for promotion to All India Services ensures objective and impartial selection. The Selection Committee is consisted by high ranking officers presided by the Chairman or a Member of the U.P.S.C.. There is no reason to hold that they would not act in fair and impartial manner in making selection... (Para 20).

Under Regulation 5 the Committee has to categorise officers on the basis of their service records in four categories as discussed earlier. The categorisation is objectively made on the material available in the service records of the officers. There is hardly any scope for applying different standards of criteria at different times as the service records namely the character roll entries would indicate the category of the officers as adjudged by the authority recording annual confidential remarks."

In U.P.S.C. Vs. Shri Hiranya Lal Dev, reported in 1988 (2) SLR 148, it has been observed as under :-

"To categorise in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee.... . The jurisdiction to make the selection vested in the Selection Committee. The Selection Committee had to make the selection by applying the same yardsticks and norms as regards the ratings to be given to the officials who were in the field of choice by categorising the concerned officials 'outstanding', 'very good', 'good', etc.. This function had also to be discharged by the Selection Committee by applying the norms and tests and the selection was also to be made by the Selection Committee as per the relevant rules." (Para 5).

In Dr.H.L.Prajapati Vs. UOI & Others reported in 1991 (2) SLJ (CAT) 282, it

has been observed by the Tribunal as under :-

"At the outset we may say that the interpretation of the applicant that if the Reporting and Reviewing Officers have graded certain officers as 'outstanding' or 'very good' then the 'Selection/Screening Committee cannot depart from the grading is mis-conceived and cannot be interpreted in terms of the citations which the applicant has quoted including the case of P.S. Dass (supra). In fact, in the extract, from the same judgement of P.S.Dass (supra) cited by the U.P.S.C., the Hon'ble Supreme Court have observed that the screening committee consists of high ranking officers presided over by a Chairman or a Member of the UPSC and there is no reason that they would not act in a fair and impartial manner in making selections. The recommendations of the Screening Committee are also scrutinised by the State Govt. as well as the UPSC and, therefore, there is no scope for making a selection which is not impartial. If the logic of the argument of the applicant is accepted then it would mean that a High Power Selection Committee would not be required and the gradings given by the Reporting and Reviewing Officers in their ACFs can be mechanically added to arrive at a result and assessment of the officers. The matter would become purely clerical in nature. The Committee considers not only what is the grading of the officers given by the Reporting and Reviewing officers but also takes into consideration other factors as could be interpreted from the ACR records as a whole and with particular reference to ACR record of recent years. They are even entitled to consider and give weightage as who has recorded remarks in the ACR. There are officers who are known to adjudge persons objectively and effectively. While others may give superlative remarks or some are prone to give very conservative remarks. The Committee has to balance and moderate the assessment. The question of the nature and type of work done by the officer, experience etc., personality and integrity factors can also be taken into consideration by the Screening/Selection Committee."

It is thus clear that Hon'ble the Supreme Court have accepted that it is for the selection committee to assess the officers for the purpose of their merit or fitness of promotion. The procedure followed by the selection committee regarding the grading as 'Outstanding', 'Very Good', 'Good' or 'Unfit', cannot be faulted as the same is not done in a



vacuum but on the basis of their service records. There is no scope of any discrimination against an individual as the entire record for the relevant years is before the committee comprising of very high ranking officers and presided over by the Chairman or a Member of the UPSC. This also makes it clear that there is no substance in the contention of the applicant that the committee cannot come to its own conclusion in regard to the assessment of the candidates being considered and the committee has to necessarily accept the grading given by the reporting/reviewing/accepting officer in the ACPs or the findings of the Hon'ble High Court/ Tribunal on that grading. If the committee were to merely go by the grading given in the ACPs without looking into the service records then the entire exercise would be reduced to a mere clerical task, that certainly cannot be the function of such a high ranking selection committee constituted for selecting officers from State Civil Services to the IAS and IPS.

17. The scope of judicial interference in the assessments made by the DPCs is, rather narrow and such occasions may arise rarely. In Badrinath v. Government of Tamil Nadu, (2000) 8 SCC 395, it has been observed that 'normally the Supreme Court does not enter into question of the correctness of assessment made by the DPCs (or Joint Screening Committees). But the instant case is a very exceptional case. Further the Hon'ble Supreme Court had held as under:-

"40. Unless there is a strong case for applying the Wednesbury doctrine or there are mala fides, courts and Tribunals cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such



conclusions, or if there is illegality attached to the decision, then the powers of judicial review under Article 226 of the Constitution are not foreclosed".

There has been repeated emphasises that the Courts are to be extremely careful in exercising the power of judicial review in dealing with the assessments made by a DPC.

18. The principle established by the Apex Court in Badrinath's case is that Courts will not interfere with assessment made by Departmental Promotion Committees unless the aggrieved officer establishes that the non promotion was bad according to Wednesbury Principles or it was mala fides. On the basis of this principle, the scope of our examination is very limited to see whether there was any mala fides on the part of any member of the committee which influenced the proceeding or whether the selection committee applied the correct procedure of fairness in respect of the applicant and that the assesement is not hit by Wednesbury Doctrine.

19. The applicant has made a charge of bias against the Chief Secretary, Government of Rajasthan, and the Principle Secretary (Home), Government of Rajasthan, as also Shri Gajanand, Dy. Secretary, Ministry of Home Affairs. The mere fact that the applicant had filed one Contempt Petition, in which the Chief Secretary and the Principle Secretary (Home), were made parties by name, does not automatically mean that such senior and highly placed officers would develop a bias against the applicant for this reason. In fact, these two officers were the Members of the selection committee and we find from the proceedings that in one year they have also assessed the applicant as 'Outstanding' apart from 'Very Good' in another year. In so far as Shri Gajanand, Dy. Secretary, is concerned, apart from the fact that applicant has made only a

general and vague allegation, the officer has no role to play in so far as the selection to IPS is concerned. The records of the applicant were before the selection committee when the committee met. This apprehension and the charge against these officers are totally unfounded, in our considered view.

20. On the second ground whether the applicant was assessed fairly by considering only the relevant records, we have referred to the proceedings of the Selection Committee. It is clear from the facts that ACR of the applicant for the year 1990-91 was not available. The committee has not made any specific mention of this fact in the minutes but it is apparent from the assessment sheets for the year 1991-92 onwards that the ACR of the applicant for the year 1990-91 was not available before the committee. The Committee apparently assessed him on the basis of his ACR for the year 1985-86 on the very first occasion when the applicant's case came up for consideration and graded him as 'Very Good'. After this grading for the year 1990-91, the overall assessment of the applicant for the select list of 1991-92 remained as 'Good' only. However, while preparing the select list for the year 1992-93 onwards the Committee has every time considered a different ACR in the case of the applicant for his grading for the year 1990-91. To make this point clear, for the year 1992-93 he has been assessed for the year 1990-91 on the basis of the ACR of the year 1986-87. For the select list for the year 1993-94, he has been assessed for the year 90-91 on the basis of the ACR of 1987-88. This procedure followed by the Committee has resulted into an obvious anomaly. The same Committee assessing the officer in the same meeting for the same year cannot grade him differently for that same year as has been done by the Committee in the instant case. While preparing the select list for the year 1991-92, the applicant has been graded as 'Very Good' for the year 1990-1991. For the select list for 1992-93 he has been graded as 'Very



'Good' for 1990-91, but for the select list of 1993-94 he has been graded only as 'Good' for the year 1990-91. To our mind, this is a case of clear anomaly and also not in keeping with the procedure required to be followed by the Committee. In Para 7.2.2 of the reply filed on behalf of UPSC, it has been stated that in the event, where ACR of an officer has not been written, the selection committee makes categorisation on the basis of ACPs' made available to it by the State Government. If the Selection Committee had categorised the officer as 'Very Good' for the year 1990-91, while preparing the select list for the year 1991-92, they could not have graded him differently for the same year while preparing select lists for the subsequent years. In Para 7.4.3, it has been stated by the UPSC that the review committee accepted the assessment made by the previous selection committee, if the officers were duly considered by the previous selection committee for the same year. This fact was also established from the proceedings of the Review Selection Committee. If the Review Selection Committee has accepted the assessment made by the previous Selection Committee for a particular year, there can be no reason for this Committee to categorise the same officer differently for the same year while preparing select lists for different years while sitting in the same meeting on the same day. Varying the assessment of the applicant for the year 1990-91, as made by this Review Selection Committee does not appeal to reason or any rationale. We are of the considered view that in so far as grading the officer for the year 90-91, Review Selection Committee has assessed him as 'Very Good' for the year 1990-91, while preparing the select list for the year 1991-92, the same grading should have been maintained while preparing the select lists for all the years in which ACR of 90-91 was relevant. By following this procedure, we find that the applicant would become entitled to be placed in the select list for the year 1993-94, in view of the norms adopted by this Selection Committee in respect of all other officers. It has been explained on

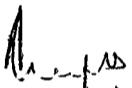


behalf of UPSC in Para 7.2.3 that the selection committee which met on 25th and 26th July, 2000 followed uniform procedure and if an ACR was missing, the ACR of the preceding 5 years of the block was taken into consideration to complete the period of 5 years. The applicant was considered for the year 93-94 to 1998 and his ACR for the respective 5 years were taken into account. No Rule has been brought to our notice in support of this procedure. In any case if the committee has once made a assessment for a particular year based on whatever method it followed, it cannot change the same grading for the same year while considering the applicant for select list of different years. This is more so, when all the select lists were prepared by the same committee in the same meeting. In view of this aberration, which cropped up in this case, we find that there is a clear case for reviewing the case of the applicant. For this purpose we do not consider it necessary for the case of the applicant to be considered by another Review Committee. Recommendations of the Selection Committee, as per the statutory provisions, are forwarded through by the State Government to UPSC for approval. As per Regulation 7(2) of the Regulations 1955, the commission can make any change in the list received from the State Government and may approve the list with such modifications as may be just and proper. Accepting Authority can always differ from the recommending authority, of course by recording reasons therefor. In this case, we consider it sufficient if the recommendations of the selection committee in respect of the applicant are reviewed by the UPSC only, keeping in view our observations in respect of his grading for the year 1990-91. This review is necessary for the select lists of the years 93-93 on-wards. While making this review of the Commission's earlier decision, the commission may take into account the grading of the officer for the year 1990-91, as made by the Review Selection Committee at the very first instance in which he has been graded as 'Very Good' for the year 90-91 i.e. while preparing the select list

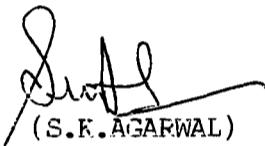


for the year 1991-92.

21. For the reasons discussed in the preceding paragraphs, we consider it appropriate to direct respondent No. 2 (UPSC) to review the recommendations of the Review Selection Committee in respect of the applicant for the year 1993-94 onward within a period of one month from the date of receipt of a certified copy of this order. Revised decision shall be communicated by respondent No. 2 to State Government respondent No. 3 and the applicant within one month thereafter. The applicant shall be entitled to all consequential benefits as a result of this review. In the facts and circumstances of the case, no order as to costs.


(A.P.NAGRATH)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)