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**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.291/2003**

**New Delhi, this the <sup>14</sup> ~~27~~ day of May, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. M.K. Misra, Member (A)**

Shri Diwan Chand  
S/o Shri Ram Kishan  
Aged 49 years  
Presently posted at Andaman and Nicobar Island  
Holding the charge of Director of Transport, Special  
Security, Personnel and Tribal Welfare,  
Andaman and Nicobar Island. .... **Applicant**

**(By Advocate: Sh. G.D. Gupta, Sr. Counsel with Sh. Rajeev  
Kumar and Sh. S.K. Sinha)**

**Versus**

1. Union of India through  
Its Secretary  
Ministry of Home Affairs  
North Block  
New Delhi.
2. Union Public Service Commission  
Through Secretary, UPSC  
Dholpur House  
New Delhi.
3. Department of Personnel & Training,  
Ministry of Personnel, Pension & Training  
Govt. of India, North Block  
New Delhi  
Through its Secretary.
4. Shri A.K. Acharya  
Posted as Deputy Commissioner  
District East  
Government of NCT of Delhi  
R/o DII 6/10, Rajpur Road,  
Delhi. .... **Respondents**

**(By Advocate: Sh. J.B. Mudgil)**

—2—  
**O R D E R**

**By Mr. Justice V.S. Aggarwal:**

Applicant (Shri Diwan Chand), by virtue of the present application, seeks to declare regulation 5 (5) of IAS (Appointment by Promotion) Regulations, 1955 as ultra vires and contrary to instructions issued by the Central Government and to set aside the posting of Respondent No.4 in pursuance to inclusion of his name in the Select List for appointment to IAS. He also prays a direction to respondents to withhold notification for appointment to Arunachal Pradesh-Goa-Mizoram and Union Territories (in short 'AGMUT') cadre of IAS and that a review DPC should be held.

2. The relevant facts alleged are that the applicant had joined Delhi, Andaman and Nicobar Island Civil Services (in short 'DANICS') in the year 1978. He earned his promotion to Grade-I of DANICS Cadre in 1983 and to Junior Administrative Grade on 17.5.1989. He was further promoted to the newly created Grade in the scale of Rs.14300-18300. The Central Government allotted three vacancies of the year 2002 to be filled up by Promotion of UTCS/PCS Officers in the UT Segment of the Joint AGMUT Cadre of IAS. In terms of regulation 5 of Indian Administrative Service (Appointment by Promotion) Rules, 1955, nine senior most officers were in the consideration zone. This included the applicant. It is asserted that as per the rules and regulations, Selection Committee to be constituted is chaired by the Chairman of UPSC or any member of the said Commission. Instructions have been

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-3-

issued on 8.2.2002 by the Department of Personnel & Training. In accordance with the same, the promotion is restricted to selection and Selection Committee is to determine the merit with reference to the prescribed benchmark. There has to be no supersession. As per the inter-se seniority of the feeder grade, the applicant figured at Sl. No.6 whereas the incumbent at Sl. No.1 was under suspension and Sl. Nos. 2 and 3 incumbents having attained 54 years of age were not eligible. It is asserted that despite the applicant's name was at Sl. No.3 and there were no adverse entries against him, he was ignored. It is in this backdrop, that the reliefs to which we have referred to above are claimed.

3. The application has been contested.

4. Respondent No.2, Union Public Service Commission (in short 'UPSC') has filed the reply. It has been pointed that in accordance with the provisions of Regulation 5 (4) of the said Regulations, the Committee classifies the eligible SCS officers in the zone of consideration as Outstanding, Very Good, Good and Unfit. Thereafter, as per the provisions of Regulation 5 (5), the said Selection Committee prepares a list by including the required number of names first from the officers finally classified as Outstanding and then from amongst those similarly classified as Very Good. The Selection Committee is not guided merely by the overall grading but in order to ensure justice, equity and fair play, makes its own assessment on the basis of an in-depth examination of service record. It is denied that the said regulations are invalid.

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- 4 -

5. Union of India, Respondent No.3 in its separate reply have taken up almost the same pleas. It contends that the promotion of State Civil Service Officers for appointment to the Indian Administrative Service is considered by a Selection Committee. In accordance with the regulations, names are considered and arranged. The UPSC finalises the said list. The applicant was at Sl. No.3 of the eligibility list of 9 officers. As per the grading given by the Committee, Sh. A.K. Acharya was placed at top of the suitability list. The applicant was not placed in the said list. It is denied that the regulations are invalid.

6. We have heard the parties' counsel and have seen the relevant record.

7. The position in law is well settled and we take advantage in referring to some of the precedents on the subject that the Tribunal has limited scope for interference when Departmental Promotion Committee assesses the merits of individual candidates. If there is a gross violation of law/rules, there is misreading of the confidential dossiers, malafides or ignorance of the principles of law, this Tribunal would be justified in interfering. In the case of **DURGA DEVI AND ANOTHER v. STATE OF H.P. AND OTHERS**, 1997 SCC (L&S) 982, the Supreme Court held that Tribunal should not itself scrutinize the comparative merits of the candidates. It is not an appellate authority over the Selection Committee. The Supreme Court held:

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-5-

“4. In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinizing the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the Selection Committee. The observations of this Court in *Dalpat Abasaheb Solunke case* [(1991) 1 SCC 305] are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10.12.1992 is quashed and the matter is remitted to the Tribunal for a fresh disposal on other points in accordance with the law after hearing the parties.”

8. Identical was the finding again recorded, in principle, in the case of **DALPAT ABASAHEB SOLUNKE, ETC. ETC. v. DR. B.S. MAHAJAN, ETC. ETC.**, AIR 1990 SC 434. The Supreme Court held:

“9. .... It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected



6

the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting I aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

9. Even in the case of NUTAN ARVIND (SMT.) v. UNION OF INDIA AND ANOTHER, (1996) 2 SCC 488, the Supreme Court held that when a high level committee had considered the respective merits of the candidates, the Court will not sit over the assessment made as an appellate authority. We reproduce the findings of the Supreme Court:

"6. .... .... .. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference."

10. It is on these broad principles which we have already summarized above that we proceed to discuss the contentions of the applicant in this regard.

11. In exercise of the powers conferred under Sub-Rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, the Central Government had framed the Indian Administrative Service (Appointment by Promotion) Regulations,

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1955. It is in accordance with these regulations that certain persons, who belong to the State service, are promoted/inducted into the IAS. Rule 3 prescribes the Constitution of the Committee to make selections and it is Rule 5 which prescribes the preparation of list of suitable officers. We are not presently concerned with Regulations 5 (1), 5 (2) and 5 (3). Regulations 5 (4) and 5 (5) hold the key and read as under:

“5 (4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' and 'Unfit' as the case may be on an overall relative assessment of their services records.

5 (5) The list shall be prepared by including the required number of names first from amongst 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 shall be in the order of their seniority in the State Civil Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing yearwise select lists for more than one year pursuant to the 2<sup>nd</sup> proviso to sub-regulation (1), the officer included provisionally in any of the Select List so prepared, shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the

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-8-

normal size of the Select List determined by the Central Government for such year.

**EXPLANATION I:** The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be.

**EXPLANATION II:** The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the office and investigation thereof is essential."

12. This clearly prescribes the method that Selection Committee has to classify the eligible officers as Outstanding, Very Good, Good and Unfit. The person classified as Outstanding will necessarily score a march over the others. This is obvious from the plain language of the regulations reproduced above. We find no reason to hold that the said regulation is illegal or invalid. When the best has to be inducted and regarded, necessarily it is to have a more efficient service. The outstanding officer scores a march over a medicare or even Very Good person. This is a Rule based on promoting the best leaving aside the others. Consequently, on this ground, the application must fail.

13. Strong reliance on behalf of the applicant was placed on Office Memorandum issued by the Ministry of Personnel, Public Grievances and Pensions of 8.2.2002. On the strength of the

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-9-

same, it was urged that once the person meets the benchmark, he cannot be ignored.

14. Before proceeding further, we deem it necessary to have a glance at the basic provisions of the said OM. Under the revised guidelines, it is provided:

### **3. Revised Guidelines**

The aforementioned guidelines which permit supercession in 'selection' promotion ('selection by merit') have been reviewed by the Government and after comprehensive/extensive examination of relevant issues it has been decided that there should be no supersession in matter of 'selection' (merit) promotion at any level. In keeping with the said decision, the following revised promotion norms/guidelines, in partial modification (to the extent relevant for the purpose of these instructions) of all existing instructions on the subject (as referred to in paragraph 1 above) are prescribed in the succeeding paragraphs for providing guidance to the Departmental Promotion Committees (DPCs).

#### **3.1 Mode of Promotion:**

In the case of 'selection' (merit) promotion, the hitherto existing distinction in the nomenclature ('selection by merit' and 'selection-cum-seniority') is dispensed with and the mode of promotion in all such cases is rechristened as 'selection' only. The element of selectivity (higher or lower) shall be determined with reference to the relevant bench-mark ('Very Good" or "Good") prescribed for promotion.

#### **3.2 Bench-mark for promotion**

The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se seniority in the

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feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC.

3.2.1 Although among those who meet the prescribed bench-mark, inter-se seniority of the feeder grade shall remain intact, eligibility for promotion will no doubt be subject to fulfillment of all the conditions laid down in the relevant Recruitment/Service Rules, including the conditions that one should be the holder of the relevant feeder post on regular basis and that he should have rendered the prescribed eligibility service in the feeder post.

3.3 **Promotion to the revised pay-scale (grade) of Rs.12,000-16,500 and above**

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'very good'. This will ensure element of higher selectivity in comparison to selection promotions to the grades lower than the aforesaid level where the bench-mark, as indicated in the following paragraphs, shall be 'good' only.
- (iii) The DPC shall for promotions to said pay-scale (grade) and above, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'very good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'very good'.

3.4 **Promotion to grades below the revised pay-scale (grade) of Rs.12,000-16,500 (including promotions from lower Groups to Group 'A' posts/grades/services)**

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-11-

(i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.

(ii) The bench-mark for promotion, as it is now, shall continue to be 'good'."

15. We would have gone into further details of these guidelines but we have already reproduced above the relevant regulations. The administrative instructions in the form of Office Memorandum will not override the provisions of the regulations. In fact, in the OM of 8.2.2002, it has specifically been provided that this should be given wide circulation and the amendment should be made in the relevant service rules/recruitment rules. Till date, when amendment has not been effected, indeed, this OM has little role to play.

16. Our attention was specifically drawn to the fact that the OM even provides for promotion from one service to another but at the risk of repetition, we only require to mention that as of today, it would only apply if there are no relevant rules on the subject. The regulations necessarily, must prevail.

17. The regulations have been framed in exercise of the powers under Article 309 of the Constitution and unless amended, keeping in view the administrative exigencies, there is precious little for this Tribunal to interfere.

18. It was not a case agitated before us where there is any misreading of the confidential reports, malafides or any such like fact. Therefore, we find no ground to interfere.

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-12-

19. For the reasons given above, the OA must fail and is dismissed.

~~M.K.Misra~~  
(M.K.Misra)  
Member (A)

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(V.S.Agarwal)  
Chairman

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