

Court No. - 2

Case :- WRIT - A No. - 5300 of 2022

Petitioner :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Appointment Civil Secr. U.P. Lko.

Respondent :- Pavitra Kumar Chatterjee Alias P.K. Chatterjee And Another

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Satya Prakash, Shikhar Anand

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

- (1) Heard learned Standing Counsel for State-petitioner and Sri Satya Prakash, learned counsel for the respondent No.1.
- (2) By means of this petition, State-petitioner has challenged the judgment dated 27.09.2021 passed by State Public Services Tribunal, Lucknow (hereinafter referred to as "**Tribunal**") in Claim Petition No.1952 of 2018 : *Pavitra Kumar Chatterjee vs. State of U.P. through the Appar Mukhya Sachiv, Appointment Department of U.P. Civil Secretariat, Annexe Bhawan, Lal Bahadur Shastri Bhawan, Lucknow* by which the claim petition of the respondent No.1 has been allowed and the order dated 19.07.2017 rejecting his claim for promotion to the higher scale of Provincial Civil Services (hereinafter referred to as "**PCS**") (5900-6700) notionally from 19.02.1997 on which the said higher scale of PCS (5900-6700) was granted to Sarvashree Chandrama Prasad and Chandra Mohan Srivastava juniors to him, has been quashed. A direction has been issued to grant the aforesaid benefits from the date it was granted to the junior persons

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mentioned hereinabove. Further direction has been issued to revise the pay of the respondent No.1 according to rules w.e.f. 19.02.1997 notionally and also to revise his pension from 01.02.2006.

- (3) The matter has been heard extensively on several dates, on 16.04.2024, we had passed a detailed order which reads as under :-

"Heard.

As regards the contention of learned counsel for the petitioner that U.P. Public Services Tribunal did not have jurisdiction to adjudicate the service dispute raised by the respondent, learned counsel for the respondents submits that respondent had earlier approached this Court by means of W.P. No.24747 of 2000 [P.K. Chatterjee vs. State of U.P. & Ors.] and the petition was dismissed on the ground of alternative remedy so that the respondent may approach the Central Administrative Tribunal. The respondent approached the Central Administrative Tribunal by means of O.A. No.89 of 2005. The said O.A. was dismissed on 25.11.2010 on the ground that the subject matter of the dispute pertains to a period of service of the respondent when he was in the Provincial Civil Services (Executive Branch), that is, under the State Government, therefore, the Central Administrative Tribunal did not have jurisdiction. Accordingly, the respondent again approached this Court by means of Service Bench No.354 of 2011. The said writ petition was disposed of on 30.09.2016 in the following terms:-

"Heard Mr.Umesh Narayan Sharma, learned counsel for the petitioner as well as learned Standing Counsel.

The petitioner has assailed the judgment and order dated 25 November 2010, passed by the Central Administrative Tribunal, Lucknow Bench, Lucknow in Original Application No.89 of 2005.

The learned Tribunal, by means of order impugned, has considered the point of limitation to file the Original Application as well as its

jurisdiction to entertain the same and arrived at conclusion that the Tribunal lacks jurisdiction to consider the matter in question, therefore, it refrained itself from entering into the merit of the case and dismissed the Original Application.

Mr.Sharma learned counsel for the petitioner has urged that this Court had entertained a writ petition being Writ Petition No.16174 of 2016 (SB) arising out of an order dated 25 February 2015, passed by the Central Administrative Tribunal, Lucknow Bench, Lucknow in Original Application No.257 of 2010 and on the basis of statement of the Joint Secretary, Home Affairs, Ministry of Home, State of U.P. that the Committee constituted by the State Government is considering the petitioner's matter for recommendation of his confirmation in the IPS Cadre to the Government of India, observed that since the learned Tribunal had allowed to the first respondent's claim for grant of benefit accrued to him in State Service till the date of his confirmation in IPS Cadre, in which we do not find any error.

Since the case of similarly situated persons are under consideration by the State Government as aforesaid, we feel it appropriate to dispose of the present case in terms of order passed in Writ Petition No.16174 (SB) of 2016 and observe that the petitioner shall be entitled to get the benefit of order dated 4 August 2016, passed by this Court in writ petition No.16174 (SB) of 2016 and the orders impugned shall not come in the way of consideration.

In the aforesaid terms the writ petition stands disposed of finally."

In pursuance thereof, the impugned order dated 19.07.2017 was passed by the State Government. This order was put to challenge by the respondent before the U.P. Public Services Tribunal by means of Claim Petition No.1952/2018 which was allowed on 27.09.2021. However, in the written statement no such objection was raised by the State before the Tribunal that the claim petition was not maintainable as is being now raised before this Court. The respondent cannot be turned into a shuttle cork and made to approach a forum and then another, back to

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the High Court and all over again to approach another tribunal. As this Court under Article 226 of the Constitution of India has jurisdiction to decide the dispute bereft of the aforesaid issue, we proceed to consider the matter on merits rather than to linger on the matter any further on the aforesaid issue.

Let the State Counsel satisfy the Court as to how the criteria of merit was followed while considering the respondent for grant of highest pay scale in the meeting of DPC held on 15.10.1996 as according to Rule 18(4) of the Uttar Pradesh Civil Service (Executive Branch) Rules, 1982, the criteria is priority subject to rejection of unfit. As we understand there are posts earmarked for grant of highest pay scale and as they are limited, therefore, the word 'priority' which can only be given on the basis of seniority. The only other criteria required to be considered is fitness. A person who has been given overall categorization of 'Uttam' cannot be said to be unfit. Had the criteria been merit then the reason given in the order dated 19.07.2017 that those having the overall ACR categorization of 'Atiuttam' were granted the highest pay scale based on merit would have been acceptable but at least as of now the criteria does not appear to be merit but as stated hereinabove, priority subject to rejection of unfit which prima facie, the respondent herein satisfies unless it is shown otherwise on the next date. It would be better if some officer not below the rank of Joint Secretary in the concerned department of the Government assists the Standing Counsel on the next date during court proceedings or if he so chooses may assist the Court itself and satisfy us as to how the reasons given in the order dated 19.07.2017 can be sustained in the light of what has been observed hereinabove. It is open for the State to bring on record any rules/ documents or pleadings which it may deem relevant to the issue involved herein.

List this case on 25.04.2024 amongst first five cases of the day. "

- (4) As would be evident from reading of the said order, the stand of the petitioner State before the Tribunal as also before this Court was that the criteria of promotion/grant

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of higher scale of PCS (Executive Branch) was merit and not priority subject to rejection of unfit whereas the Tribunal had decided the claim petition on the premise that it was the latter which was the criteria of consideration for promotion/higher pay scale as aforesaid.

- (5) On the next date when the case was taken up, a supplementary affidavit was filed by the petitioner State and after hearing the parties and perusing the same, this Court passed the following order on 25.04.2024 :-

"1. In response to the order dated 16.04.2024, a supplementary affidavit filed today is taken on record. There are the rules known as U.P. Government Servants Criterion for Recruitment by Promotion Rules, 1994 (hereinafter referred to as "Rules, 1994") according to which the criteria for recruitment to a post in any service carrying the pay scale the maximum of which is Rs. 6700/- or above shall be made on the basis of merit. In this case, the respondent was to be considered for highest pay scale of PCS Executive i.e. 5900 to 6700, therefore, the criteria for the same was merit as per the Rules, 1994. These rules for some reason could not be placed before the Tribunal by the claimant who is respondent therein nor by the State who is the petitioner. In the claim petition, we do not find any reference to these rules, therefore, the Tribunal has proceeded on the premise as if the criteria for promotion was 'priority subject to rejection of the unfit' as was noticed by us in our earlier order dated 16.04.2024 and accordingly based on the factual premise that persons junior to the respondent had been considered and granted the highest scale of PCS (5900-6700) allowed the claim petition of the respondent with the observation that the claimant is entitled to be the highest scale of PCS (5900-6700) notionally from the date 19.02.1997 on which the said highest scale was granted to Sarvashree Chandrama Prasad and Chandra Mohan Srivastava junior to him. The opposite parties before the Tribunal who are petitioners herein were further

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directed to revise the pay of the petitioners according to rules w.e.f. 19.02.1997 notionally and also to revise his pension w.e.f. 01.02.2006. This order was to be complied within four months.

2. On being confronted learned counsel for the respondent submitted that apart from the aforesaid issue the numbers given by the DPC is also not correct, many of the entries in the ACR for the relevant years which were considered were unavailable, therefore, an attempt should have been made to get the said entries. Contention is that marks have not been appropriately awarded which was also an issue before the Tribunal.

3. Put up tomorrow for further hearing. "

- (6) On a bare perusal of it, it is evident that as per rules known as U.P. Government Servants Criterion for Recruitment by Promotion Rules, 1994 (hereinafter referred to as "**Rules, 1994**") the criteria for recruitment to a post and service carrying the pay scale, the maximum of which is Rs.6700/- or above, shall be made on the basis of merit. In the case at hand, the respondent No.1 was to be considered for higher pay scale of PCS Executive i.e. 5900-6700, therefore, the criteria for the same was merit as per the Rules, 1994 and the said rules have overriding effect over any other service rules, as per Rule 2. In this view of the matter the criteria of "priority subject to rejection of unfit" as mentioned in the service rules, namely, U.P. Civil Service (Executive Branch) Rules, 1982 (hereinafter referred to as "**Rules, 1982**") stood superseded by the subsequent rules of 1994. Therefore, apparently, the Tribunal proceeded to decide the claim petition of the respondent No.1 on the wrong factual and legal premise as noticed hereinabove.
- (7) However, considering the long litigation undertaken by the respondent No.1, this Court instead of relegating the

matter to the Tribunal thought it proper to consider the claim of the respondent No.1 based on the aforesaid criteria of merit.

(8) The respondent's counsel as is noticed in the said order dated 25.04.2024 next submitted that the numbering given by the Departmental Promotion Committee (hereinafter referred to as "**DPC**") is also not correct, many of the entries in the Annual Confidential Report (hereinafter referred to as "**ACR**") for relevant years which were considered were unavailable, therefore, an attempt should have been made to get the said entries. Contention was that marks had not been appropriately awarded which was also an issue before the Tribunal.

(9) We, therefore, confronted the State-petitioner in this regard. On 26.04.2024, we had passed the following order.

"1. Heard.

2. We have been informed today that for the year 1994-95 for the period 01.04.1994 to 13.08.1994 entry of 'Good' was given to the respondent whereas for the period 14.08.1994 to 31.12.1994, entry of 'Outstanding' was given and for the remaining period i.e. 01.01.1995 to 31.03.1995, the entry was unavailable. Likewise, for the year 1995-96, for the period 01.04.1995 to 30.09.1995, the respondent was categorised as 'Very Good', however, for the remaining period i.e. 01.10.1995 to 31.03.1996, entry was not available. In this regard, there is a government order, according to which, in the event of unavailability of entry for the particular period, the prior and succeeding entries will be taken into consideration and the Selection Committee will accordingly take a decision as per its wisdom based on the said prior and succeeding entries. Now, for the period prior to 01.04.1994 to 31.03.1995 relating to the year 1994-95, there are

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two entries in favour of the respondent, one is of 'Good' and another is of 'Outstanding' as already detailed hereinabove and the succeeding entry for the period 01.04.1995 to 30.09.1995 (1995-96) is 'Very Good'. Based on this, marks were to be awarded and assessment was to be made of the merit of the respondent. Likewise for the period 01.10.1995 to 31.03.1996, the entry was not available, therefore, the preceding entry of 'Very Good' for the period 01.04.1995 to 30.09.1995 and succeeding entry for the period 01.04.1996 to 31.03.1997 which was 'Outstanding' were to be taken into consideration to award marks and/ or assess the merit of the respondent. We would like to see as to in what manner the merit of the respondent was assessed as the ultimate categorization of 'Uttam' in respect of the respondent by the Committee is the final conclusion but how the ten years' entries have been assessed to arrive at this conclusion of 'Uttam' is the issue. Most specifically, how the period for which the entries are not available has been assessed.

3. Let the Broadsheet be placed before the Court. Let the relevant government orders on the subject as to how marking is to be done for assessing merit based on entries in ACR be placed before this Court on the next date. The said government orders along with G.O. dated 30.04.1991 and the Broadsheet of the records of the Selection Committee wherein the respondent was considered along with others in the year 1997 based on the entries in the A.C.R. for the period 1986-87 to 1995-96 was considered be also placed before the Court even if it is not annexed with the affidavit.

4. The matter shall now come up before this Court on 09.05.2024 amongst first ten cases of the day. "

- (10) As would be evident from what has been recorded in the said order, the entries in the ACR for the period 1986-87 to 1995-96 were to be taken into consideration to determine the merit of the eligible candidates for grant of highest pay scale of PCS Executive i.e. 5900-6700. Entries in the ACR of the respondent No.1 for some of the periods as has been

detailed in the order dated 26.04.2024, were missing. In this context, we took into consideration, Government Orders dated 22.03.1984 and 20.08.1993 according to which the past practice of treating the period of unavailable entries as satisfactory was done away with instead it was provided that for the period the relevant entries are not available same would be treated as blank and that period would be categorised on the basis of the preceding and subsequent entries. The said Government Orders dated 22.03.1984 and 20.08.1993 had been placed before us during course of hearing and has been taken on record.

- (11) However, on being asked the counsel for the State-petitioner with the assistance of Mr. Vijai Kumar, Special Secretary and Mr. Abhijit Srivastava, Under Secretary, informed the Court that the practice being followed in the DPC's at the relevant time was to award marks on the basis of a formula i.e. for each 'outstanding' entry for the entire year entry, 3 marks were awarded. 2 marks were awarded for a 'very good' entry if such entry was for the entire period of 12 months in a year. Likewise, 1 mark was awarded for entry of 'good' on the same criteria if it was good for the entire period of 12 months. If for different periods in a year different entries had been granted, for example, for a particular period, say two or three months, 'outstanding' has been awarded, for other period of the same year some other entry has been awarded then 3 marks would be awarded for the said two or three months and for the remaining period the marks would be awarded based on the entries given proportionately vis-a-vis the

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number of months in the year. Based on it, total marks obtained for the total period of 120 months (10 years) would be taken and divided by actual number of months for which the entries are available and this would be multiplied by 120 which is the total number of months. This according to them resulted in averaging of marks for the entire period including the period for which the entry was not available.

(12) Apparently, we find that as far as Government Orders dated 22.03.1984 and 20.08.1993 are concerned, what they speak of is that the period for which the entries are not available, these period would be "categorised" on the basis of the preceding and subsequent entries, therefore, what was required to be done was that taking into consideration the preceding and subsequent entries first and foremost the categorisation for the said period had to be done. For example, if the preceding entry was 'outstanding' and the succeeding entry was 'good' then apparently the categorisation for the intervening period for which the entry is not available would be 'very good' which is the only intervening categorisation and then based on such categorisation for the period for which entry was not available, marks should have been awarded. However the procedure followed by DPC's at the relevant time as mentioned by the officers and as noticed above, appears to be slightly different. DPC was held in the year 1996 about 30 years ago.

(13) Considering the long time spent in litigation and in order to resolve the issue, we asked the aforesaid two Officers

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who are present in Court to kindly prepare a chart based on the entries already available not only of the respondent No.1 but also of the two junior persons on the basis of government orders already referred above, so that we may have some idea as to whether respondent No.1 would fare better based on the same.

(14) Based on this exercise they have presented before us a chart, a copy of which has also been given to Sri Satya Prakash, counsel for the respondent No.1 in presence of respondent No.1 who is present in person.

(15) But before considering it we may refer to another chart prepared by the petitioner which was taken into consideration earlier in the DPC held in the year 1996. On the basis of the formula referred by the officers as has also been mentioned in the supplementary counter affidavit, to which respondent No.1 has not filed any response. From this chart we find that the respondent No.1 had secured only 15.60 marks and as this was less than 18, which was the benchmark for being meritorious, therefore, he was not found meritorious. It may be mentioned that as per the policy of the Government, only those who secured more than 18 marks on the basis of their ACR's for the 10 years qualified as meritorious and amongst these meritorious persons they were further categorised as 'very good' and 'good'. Promotions would be made firstly from those categorised as 'very good' (अति उत्तम).

(16) The case of the petitioner is that initially in 1996 the two juniors person were categorised as 'very good' whereas the

respondent No.1 was categorised as 'unfit' obviously because the juniors secured more than 18 marks and even there they were not categorised merely as 'good' but as 'very good' whereas the respondent No.1 was categorised as 'unfit' because he secured less than 18 marks.

- (17) It is informed that in 1997 the respondent No.1 was again considered and for some reason he was categorised as 'उत्तम' i.e. 'good' meaning thereby, he was given more than 18 marks. Though it has not been explained as to how this happened if the entries remained as they are but the only explanation offered by the officers present is that possibly some of the entries which were not available may have become available, however, we do not go into this controversy as the fact remains that even after categorisation as 'good' the juniors were still categorised above him as 'very good' and, therefore, they were more meritorious.
- (18) We are informed by the petitioner that the assessment of merit is by the DPC and this was done in 1996, the officers, who are present were not part of the DPC, therefore, they are unable to inform the Court as to how and what was the basis for categorising some of the meritorious candidates as 'very good' and others as 'good', the broadsheet is not available, though other records are available.
- (19) Now after the exercise suggested by us based on the Government Orders dated 22.03.1984 and 20.08.1993, the second chart which has been prepared and placed before

us, a copy of which has already been provided to the respondent No.1, respondent No.1 would at best secure 16.74 marks i.e. less than 18. Moreover, applying the same criteria the juniors, namely, Sarvashree Chandrama Prasad would secure 25.75 marks and Chandra Mohan Srivastava would secure 21.17 marks, therefore, this exercise also does not help the respondent No.1.

- (20) The respondent No.1 has given his own chart as to what number he would secure based on his ACR but even by that numbering as per his version he secured 17.99 marks which is less than 18 marks, therefore, as per the criteria as he does not cross the benchmark of 18, therefore, he is 'unfit'. Even if marks are treated as 18 there is no dispute about the fact that juniors were categorised as 'very good' and not merely 'good'. We also find that in the chart prepared by the respondent No.1, himself he has given full marks corresponding to his entries ignoring the fact that the said entries were only for a few months and not the entire year, therefore, apparently, it is erroneous, whereas the marks were to be given proportionately.
- (21) Be that as it may, in either eventuality one thing is clear that juniors were found to be more meritorious than the respondent No.1.
- (22) Now we cannot turn ourselves into a DPC or Selection Committee, we have only to see the validity of the judgment of the Tribunal and we find that it has proceeded on a wrong factual and legal premise regarding the criteria for promotion as already noticed, therefore, that decision

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has to go but, in addition to it we made some exercise with the help of officers of the State Government who are present to find out as to whether based on the criteria of merit the respondent No.1 could have been assessed as meritorious for promotion, however, we find that from whatever records are available the juniors were found to be more meritorious and it is not a case where the criteria was merit-cum-seniority but purely merit, therefore, we have no reason to grant any relief to the respondent No.1.

(23) It is high time that the dispute is given a quietus. We have spent enough time trying to resolve the matter within the limits of scope for exercise of jurisdiction under Article 226 of the Constitution of India.

(24) For all these reasons, the writ petition is **allowed**. The impugned judgment dated 27.09.2021 is set aside.

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 22.5.2024/Shubhankar