

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.2314 of 2004

Dr. K.K. Gupta, Aged about 43 years, S/o Shri S.L. Gupta, R/o Jail
Superintendent, Central Jail, Ambikapur, District Sarguja (C.G.)
---- Petitioner

Versus

1. State of Chhattisgarh, Through the Principal Secretary/Additional
Chief Secretary, Department of Home, D.K.S. Bhawan, Mantralaya,
Raipur (C.G.)
 2. Director General of Police, Chhattisgarh, Raipur (C.G.)
 3. Collector, Raipur (C.G.)
 4. Prabhu Dayal Verma, Deputy Inspector General of Jails, Raipur
(C.G.)
 5. Public Service Commission, through Secretary, Shankar Nagar Road,
Raipur (C.G.)
- Respondents

For Petitioner:	Mr. Jitendra Pali, Advocate.
For State/Respondents No.1, 2 and 3: -	Mr. Arun Sao, Deputy Advocate General.
For Respondent No.4:	None present, though served.
For Respondent No.5:	Mr. Ashish Shrivastava and Mr. Soumya Rai, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/10/2017

1. The Departmental Promotion Committee (DPC) consisting of
Chairman, Public Service Commission; Principal Secretary (Home);
Director General (Jails); and Superintendent & Deputy Secretary
(Home) considered the case of the petitioner as well as respondent
No.4 for the promotional post of Deputy Inspector General of Jails,
that recommendation was accepted by the State Government and

respondent No.4 was promoted on the post of Deputy Inspector General of Jails vide order dated 19-1-2004. Feeling aggrieved against the said order of promotion, the petitioner has filed this writ petition stating inter alia that the DPC while considering his case, his two gradings of “outstanding” was downgraded to “very good” and thereafter, on consideration, he was found to be equally meritorious, otherwise he is more meritorious than respondent No.4 and thereby, he is deprived of promotion which is clearly unsustainable and bad in law, though he has been promoted on the post of Deputy Inspector General of Jails in the year 2013.

2. Return has been filed opposing the writ petition stating inter alia that this Court would not sit over the assessment made by the DPC in exercise of jurisdiction under Article 226/227 of the Constitution of India and therefore the writ petition deserves to be dismissed.
3. Mr. Jitendra Pali, learned counsel for the petitioner, would submit that the DPC has downgraded the two “outstanding” gradings of the petitioner from 1-4-2002 to 30-9-2002 and from 1-10-2002 to 31-3-2002 to “very good” without giving any opportunity to make representation as held by the Supreme Court in the matter of **Dev Dutt v. Union of India and others**¹ which has further been affirmed by a bench of three judges of the Supreme Court, as the DPC has no authority to downgrade the grading of the petitioner while evaluating the comparative merit.
4. Mr. Arun Sao, learned Deputy Advocate General appearing for the State / respondents No.1, 2 and 3, would support the impugned

¹ (2008) 8 SCC 725

promotion.

5. None present for respondent No.4, though served.
6. Mr. Ashish Shrivastava, learned counsel appearing for the PSC / respondent No.5, would also support the impugned promotion and submit that the jurisdiction of this Court under Article 226 of the Constitution of India is very limited, this Court cannot sit in appeal over the assessment made by the DPC and no perversity or mala fide has been shown by the writ petitioner in this writ petition or in argument. In fact, the DPC has fairly and objectively considered the cases of both the persons i.e. the petitioner and respondent No.4, therefore, no interference is called for in exercise of jurisdiction under Article 226 of the Constitution of India and the writ petition deserves to be dismissed.
7. I have heard learned counsel for the parties and considered their rival submissions and also gone through the material available on record extensively.
8. The DPC while evaluating the annual confidential reports of the petitioner, found two ACRs for the year 2002-03, one commencing from 1-4-2002 to 30-9-2002 in which he has been graded as "very good" by the Collector, whereas the Director General of Jails graded him as A⁺ to which the Principal Secretary (Home) has consented, but did not give any reason for grading A⁺ and thereby the DPC has accepted it as "very good". The second one was for the period from 1-10-2002 to 31-3-2003 in which the Collector has given the grading as A⁺ to which the

Director General of Jails has consented, but the Additional Chief Secretary (Home) has graded him as “very good” and thereby the DPC has accepted it as “very good”.

9. The aforesaid narration of facts clearly states that for the period commencing from 1-10-2002 to 31-3-2003, the petitioner was graded as “very good” by the competent officer and there is no dispute on that. Only for the period from 1-4-2002 to 30-9-2002, he was graded as A⁺ by the Director General of Jails which has been accepted as “very good” by the DPC to have one grading for a particular year i.e. 2002-2003.

10. It is common practice that if a particular Government servant is graded “outstanding”, reasons are required to be recorded. This practice is in vogue since long. Since that was not recorded by the Director General of Jails while grading the petitioner as A⁺ particularly when the reporting officer Collector has recorded as “very good”, that is the reason why the DPC has accepted the grading as “very good” for a period of six months and that is rather the established practice prevalent among the Government Departments which is not in dispute.

11. The DPC after due evaluation for the relevant year found that grading of both the petitioner as well as respondent No.4 are equal and further found that respondent No.4 is senior to the petitioner and considering the over all performance and service record, decided to recommend respondent No.4 for the post of

Deputy Inspector General of Jails.

12. In the matter of **Col. Avtar Singh Sekhon v. Union of India and others**², the Supreme Court has clearly held that if two persons are having equal merit, promotion given to senior most is justified and observed as under in para 4: -

“4. ... In this process, both were adjudged equal and the senior (the respondent in the review petition) was recommended for appointment. Thus, it is obvious that had the Defence Ministry been permitted to choose, the respondent would have enjoyed the post. There is nothing outrageous in picking the senior when both are otherwise equal. There is a human side to it also. The senior was to retire in a few months and the other hopefully would have his innings.”

13. In the present case also, respondent No.4 being senior was picked-up, as he was to retire first.

14. In the matter of **Union of India and others v. N.R. Banerjee and others**³, the Supreme Court has delineated the guiding principles for the DPC by stating as under: -

“Claims of eligible candidates have to be considered for promotion objectively and dispassionately, with a sense of achieving manifold purpose: (1) affording an opportunity to the incumbent to improve excellence, honesty, integrity, devotion to public duty; (2) inculcating discipline in service; (3) afford opportunity to every eligible officer within the zone of consideration for promotion to a higher post or office; and (4) ensuring that the Committee regularly meets and considers their claim objectively, impartially with a high sense of responsibility in accordance with the procedure and finalisation of the list in advance so as to fill up vacancies arising in the year from the approved panel without any undue delay. They are salutary principles and form the purpose and the

2 1980 (Supp) SCC 562

3 (1997) 9 SCC 287

policy behind the rules and the Government should follow them.”

15. The Supreme Court in the matter of **Air Vice Marshal S.L. Chhabra, VSM (Retd.) v. Union of India and another**⁴ has held that the court should not moderate the appraisal and grading given to an officer and while exercising power of judicial review, the court should not venture to assess and appraise the merit or the grading of an officer, and observed as under in para 10: -

“10. It is well known that a Selection Board, while considering the suitability of an officer for promotion to a higher post or rank, takes into consideration several factors and it is not solely based on the Appraisal Report of the controlling officer. The learned Additional Solicitor General produced the proceedings of the Selection Board of 1987 and pointed out that the Selection Board had postponed the promotion of the appellant on the ground, that only one report was available by that time and as such decision was taken to watch the performance of the appellant at least for a year more, to assess his potentiality and suitability for discharging the higher responsibility attached to the rank of Air Vice Marshal. The aforesaid fact has been mentioned in the proceedings of the Selection Board of the year 1987. In such a situation, it was neither possible for the High Court, nor is possible for this Court to act as a court of appeal against the decision of the Selection Board, which has been vested with the power of selection of an officer for being promote to the rank of Air Vice Marshal. No oblique motive has been suggested on behalf of the appellant against any of the members of the Selection Board and there is no reason or occasion for us to infer such motive on the part of the members of the Selection Board for denying the promotion to the appellant with reference to the year 1987. Public interest should be the primary consideration of all Selection Boards, constituted for selecting candidates, for promotion to the higher posts, but it is all the more important in respect of Selection Boards, meant for selecting officers for higher posts in the Indian Air Force. The

4 1993 Supp (4) SCC 441

court cannot encroach over this power, by substituting its own view and opinion. According to us, there is no scope to interfere with the decision of the Selection Board of 1987, merely on the ground that adverse remarks, in the Appraisal Report of 1986, which were placed before the Selection Board in the year 1987, were later expunged.”

16. Likewise, in the matter of **Union of India and others v. Lt. Gen.**

Rajendra Singh Kadyan and another⁵, the Supreme Court has held that where the entire service profile was considered by the authorities concerned or by the DPC, court cannot substitute its own view to that of the authorities / DPC sitting under Articles 226 and 136 of the Constitution of India, and observed as under in para 29: -

“29. ... It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.”

17. In the matter of **Syed T.A. Naqshbandi and others v. State of**

Jammu & Kashmir and others⁶, the Supreme Court has delineated the scope of judicial review in the consideration made by the competent authority while considering the case of a person for higher promotional post and held as under: -

“On a careful consideration of the entire materials, it

5 (2000) 6 SCC 698

6 (2003) 9 SCC 592

must be held that the evaluation made by the Committee/Full Court forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be blown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted.”

18. Recently, in the matter of **Union of India and others v. S.P.**

Nayyar⁷, the Supreme Court again while delineating the scope and grounds for judicial review in a consideration made by the DPC has held that High Court under Article 226 of the Constitution of India cannot sit in appeal over the assessment made by the DPC. The Supreme Court observed in paragraphs 11, 13, 14 and 15 of its report as under: -

“11. It is settled that the High Court under Article 226 of the Constitution of India cannot sit in appeal over the assessment made by the DPC. If the assessment made by the DPC is perverse or is not based on record or proper record has not been considered by the DPC, it is always open to the High Court under Article 226 of the Constitution to remit the matter back to the DPC for recommendation, but the High Court cannot assess the merit on its own on perusal of the service record of one or the other employee.

13. The bias and mala fide acts can be adjudged only on the basis of evidence. The assessment of character roll by one or the other officer, giving a general grade such as “Good” cannot be the sole ground to hold that the officer was biased against the person whose character roll is assessed. In the instant case, there is nothing on record to suggest that the Appellant 3, E.N. Ram Mohan was biased against the respondent. Merely because he

7 (2014) 14 SCC 370

assessed the ACR of the respondent as “Good” as against assessment of “Very Good” made by IO it cannot be said that he was biased against the respondent.

14. The Departmental Promotion Committee consists of a Chairman and the members. Even if bias is alleged against the Chairperson, it cannot be presumed that all the members of the Committee were biased. No ground has been made out by the respondent to show as to why the assessment made by the DPC is not to be accepted. The High Court failed to notice the aforesaid fact and wrongly discarded the assessment made by the DPC.

15. It is also settled that the High Court under Article 226 can remit the matter for reconsideration if a person was not properly considered for a promotion for which he was eligible. But it cannot direct to promote a person to the higher post, without giving a plausible ground.”

19. The principle of law laid down in the aforesaid case of **S.P. Nayyar** (supra) has been followed with approval by the Supreme Court in a recent decision in the matter of **H.S. Sidhu v. Devendra Bapna and others**⁸.

20. Following and applying the principles of law laid down by Their Lordships of the Supreme Court in afore-cited cases, to the facts of the present case, in the present case, it would be quite vivid that the DPC has objectively and fairly considered the case of the petitioner as well as respondent No.4 and also recorded its reasoning in its meeting and further found that gradings of both the petitioner and respondent No.4 are equal and thus, decided to recommend respondent No.4 for the promotional post of Deputy Inspector General of Jails considering the overall service

8 (2016) 1 SCC 495

record and particularly that respondent No.4 being senior is likely to retire first prior to the petitioner. In the considered opinion of this Court, there is neither any perversity nor any bias established by the petitioner in the proceeding of the Departmental Promotion Committee to interfere in exercise of jurisdiction under Article 226 of the Constitution of India, as the recommendation has been made on the basis of material available on record. The judgment relied upon by the petitioner in the matter of **Dev Dutt** (supra) is not applicable to the facts of the present case, as it is not the case of downgrading of the petitioner's grade, but in order to have uniform grade for the entire year, he has been graded "very good".

21. As a fallout and consequence of aforesaid discussion, it is held that the petitioner has failed to make out a case for interference in the recommendation made by the DPC for the post of Deputy Inspector General of Jails. The writ petition is accordingly dismissed leaving the parties to bear their own costs in the peculiar facts and circumstances of the case.

Sd/-
(Sanjay K. Agrawal)
Judge