

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 17th August, 2017**

% **W.P.(C.) No.7367/2012**

PAWAN KR. KALRA Petitioner
Through: Mr.Ashwin Vaish & Mr.Vinod
Pandey, Advocates.

versus

THE REGISTRAR GENERAL, DELHI
HIGH COURT & ORS. Respondents
Through: Mr.Sanjoy Ghose, ASC for DHC.
Mr.Arun K. Sharma, Advocate for
R-3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J. (ORAL)

1. The Petitioner who is presently a Joint Registrar in the Delhi High Court has, by way of the present writ petition, challenged the decision dated 04.08.2008 of the Selection Committee, vide which the Petitioner was superseded for appointment to the post of Assistant Registrar by the Respondent Nos.2 & 3.

2. The brief facts relevant for the adjudication of the present petition are, that the Petitioner joined services of this Court as a Senior Stenographer in the year 1994 and was promoted as an Administrative Officer (Judicial) in the year 2002. From 2005 to 2009, the Petitioner worked as a Court Master and his next promotional avenue was that of Assistant Registrar. On 04.08.2008, the Selection Committee comprising of four Hon'ble Judges of this Court considered eligible candidates for promotion, *inter alia*, to the post of Assistant Registrar. There were 7 vacancies of Assistant Registrars and, accordingly, the names of 12 senior-most eligible Court Masters and 8 senior-most Private Secretaries were considered by the Committee. The consideration was based on the service record of the candidates, including the ACRs for the preceding five years. Based on his seniority, the Petitioner was placed at Serial No.5 of the list of candidates being considered for promotion by the Committee. Upon consideration of the merit of all the 20 candidates, the Selection Committee recommended names of seven candidates, including the Respondent Nos.2 and 3 for promotion as Assistant Registrar. The Committee, however, graded the Petitioner and two other candidates namely Mr.Mukesh Bhambri and Ms.Sadhna Gupta- as being 'unfit' for promotion, even though based on their seniority they had been placed at Sl. Nos.1 and 2 in list of candidates being considered for promotion.

3. At this stage, we may take note of the Petitioner's ACR gradings. The Petitioner earned a 'Very Good' grading in his ACR for the year 2002, but in his subsequent ACRs for the year 2003 to 2006, he had been graded as 'Good'. In the year 2007, he was again upgraded to 'Very Good'. It further

transpires from the record, that based on his representation, the Petitioner's ACR for the year 2006 was subsequently-on 22.01.2009, upgraded from 'Good' to 'Very Good'. With this change in his ACR grading for the year 2006, the Petitioner was once again considered for promotion on 23.07.2009. This time, the Selection Committee graded him as 'fit' for promotion, and he was accordingly promoted as Assistant Registrar on 23.07.2009.

4. Before dealing with the contentions raised on behalf of the Petitioner, it would be apt to note that promotion to various posts in the establishment of the High Court of Delhi is governed by the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 hereinafter referred to as the 'Rules'. The mode and qualifications for appointment to the various posts is prescribed in Schedule II; Entry No.3 of this Schedule dealing with the post of Assistant Registrar (Selection Post) prescribes that the appointment would be made by selection from confirmed officers holding the posts of Private Secretary, Administrative Officer (Judicial) and Court Masters, on merit. The relevant extract of Schedule-II reads as under:-

Schedule –II

S.No.	CATEGORY OF POST	MINIMUM QUALIFICATIONS PRESCRIBED FOR APPOINTMENT TO THE POSTS	Mode of Appointment
3	Assistant Registrar (Selection Post)	-	By selection on merit from confirmed Officers of (Selection Post) the Categories 5, 6 and 7 of Class II mentioned in Schedule I in

			the ratio of Category 7 of Class II mentioned in Schedule I (Private Secretary) and from the Officers of the Categories 5 and 6 of Class II mentioned in Schedule-I (Administrative Officer (Judicial) and Court Master). The first vacancy shall be filled in from the Officer of Category 7 of Class II mentioned in Schedule –I (Private Secretary) and thereafter by rotation dependent on the strength of the Cadres. Provided that if there be no officer available or found fit for promotion out of the officers falling in consideration zone in any one of the above said categories, the vacancy may be filled from the other category by rotation as above subject to adjustment at the future selection/selections but without prejudice to the seniority of the person(s) already appointed. <u>EXPLANATIONS:</u> The present cadre strength of Private Secretaries and Admn. Officer (Judl)/Court Master is 61 and 78 respectively. Thus, the rotation of the vacancies in the cadre of Assistant Registrar will be filled in the ratio of 3 (PS): 4(AOJ/CM); that is first vacancy from PS, second from AOJ/CM, third from PS, fourth from AOJ/CM, fifth from PS and sixth and seventh from AOJ/CM and so on and so forth.
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(emphasis supplied)

5. The rules, thus, provide for merit based selection, without prescribing any specific criteria or benchmark for determining the merit. Every Selection Committee was, therefore, entitled to devise its own methodology to determine the merit of the candidates. This position prevailed when the

Selection Committee met on 04.08.2008 to consider selections for filling up the seven posts of Assistant Registrars. However, in the meeting of the Selection Committee held on 23.12.2009, upon finding that no formal benchmark had been laid down for promotion to the various posts under the Rules, the Committee recommended that a benchmark of at least three 'Very Good' ACRs during the past five years, should be prescribed for consideration of candidates for the post of Assistant Registrar/Deputy Registrar/Joint Registrar. The Committee, accordingly, recommended that only those candidates who fulfilled this benchmark, should be considered and assessed for promotion in accordance with the Rules. This recommendation of the Selection Committee was accepted by the Hon'ble Chief Justice on 26.12.2009 and thus, from 26.12.2009 onwards, only the candidates fulfilling the criteria of having at least three 'Very Good' ACRs during the preceding five years are being considered for selection to the aforesaid posts of Assistant Registrar, Deputy Registrar and Joint Registrar. The selection, however continues to be based on merit.

6. Though the Petitioner had not raised any grievance regarding his supersession in August 2008, after his promotion as Assistant Registrar on 23.07.2009, he submitted a representation dated 27.11.2009 praying for restoration of his seniority as Assistant Registrar. The main plea raised by the Petitioner in his representation was that his ACR for the year 2006- which had been considered at the time of his supersession in August 2008, now stood upgraded in January 2009 and, therefore, his case for promotion ought to be reconsidered with effect from the date on which his juniors had been promoted as Assistant Registrar in August 2008. Receiving no

response to his representation dated 27.11.2009, the Petitioner submitted another representation dated 15.04.2010 which was rejected on 25.05.2010. Pertinently for more than 2 ½ years, the Petitioner neither made any further representation, nor challenged the minutes dated 04.08.2008 of the Selection Committee, or the order dated 25.05.2010 rejecting his representation. It was only on 09.11.2012 that the Petitioner preferred the instant writ petition challenging the decision of the Selection Committee taken more than 4 years earlier.

7. Arguing for the Petitioner, Mr.Ashwin Vaish, Advocate has challenged the supersession of the Petitioner in 2008 on four grounds-the first and foremost being that till 26.12.2009, there was no prescribed benchmark for promotion. Mr. Vaish submits that keeping in view the four 'Good' and one 'Very Good' ACRs that he had earned, his supersession in the meeting of 04.08.2008 was wholly arbitrary. He contends that once there was no specified benchmark, and the Petitioner had four 'Good' and one 'Very Good' as his last five ACRs, he could not be superseded as there was nothing adverse in any of his ACRs. The second submission urged on behalf of the Petitioner is that the Selection Committee has erred in disregarding the *inter se* seniority of the candidates, and has failed to consider the effect of DoPT's Office Memorandum dated 8th February, 2002. He has relied on Paras 3.1 and 3.2 of the said Office Memorandum in support of his argument that candidates had to only be assessed as either 'fit' or 'unfit' with reference to the relevant benchmark prescribed in the OM. The plea is that after issuance of this OM dated 08.02.2002, the only requirement is to see

whether the candidate meets the benchmarks, and there can be no supersession of candidates meeting the benchmark prescribed in the OM.

The said Office Memorandum read as under:-

“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 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 fulfilment 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)*

- (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'.*
- (iii) *The DPC shall for promotion to posts/grades/services in the aforesaid categories, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of '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 benchmark of 'good'.*

3.5 *Zone of consideration*

The guidelines relating to the 'zone of consideration' in its existing form (twice the number of vacancies plus four) shall continue to have general application. However, in view of the modifications in promotion norms indicated in paragraph 3.3 above, the following stipulation [as is already applicable in the case of promotions below the revised pay-scale (grade) of Rs.12,000-16,500 vide DoP&T O.M. no.22011/8/98-Estt(D) dated November 6, 1998] is also made in the regard to the zone of consideration for promotion to the revised pay-scale (grade) of Rs.12,000-16,500 and above:

"While the zone of consideration would remain as already prescribed, the DPC, in the aforesaid category of cases, may assess the suitability of eligible employees in the zone of consideration (in the descending order) for inclusion in the panel for promotion up to a number which is considered sufficient against the number of vacancies. With regard to the number of employees to be included in the panel, the DPC may also be required to keep in view

the instructions issued vide Department of Personnel and Training Office Memorandum No.22011/18/87-Estt(D) dated April 9, 1996 relating to norms for Preparing extended panel for promotion. In respect of the remaining employees, the DPC may put a note in the minutes that "the assessment of the remaining employees in the zone of consideration is considered not necessary as sufficient number of employees with prescribed bench-mark have become available."

8. Mr. Vaish submits that with reference to the promotions granted to Mukesh Bhambri, Usha Kiran Gupta and Ms Sadhna Gupta, no specific benchmark was followed by the Selection Committee, leading to inconsistency in the criteria adopted by the various Selection Committees. It is contended that all these three persons, after being superseded on the first occasion, were promoted in the very next Selection Committee meeting, even without there being any change in their ACR Profile. Based on the minutes of Selection Committee relating to these three persons, the Petitioner has raised his third ground to contend that he has been discriminated against, as all the three aforesaid persons were promoted on basis of their seniority, even when they had one or two 'Very Good' ACRs. However, promotion was denied to the Petitioner by ignoring his seniority, and that too when he had two 'Very Good' ACRs.

9. The last submission made on behalf of Petitioner is that his uncommunicated ACRs for the years 2003 to 2005 & 2007 containing below benchmark grading of 'Good' have been used to grade him as 'unfit' for promotion. He, thus, contends that in view of the judgment of the Supreme Court in the case of **Devdutt vs. Union of India** 2008 (8) SCC 725, the ACRs for the period 2003 to 2005 & 2007 which were admittedly not

communicated to him, should be ignored and he ought to be reconsidered for promotion, as on 04.08.2008, by the Selection Committee.

10. On the other hand, Mr. Sanjay Ghose appearing for the Respondent/ High Court has firstly contended that the Writ Petition is grossly barred by delay and laches, as the same has been filed after four years of the Petitioner's supersession. He relies on various judgments of the Apex Court in support of his submission that in service matters, a belated challenge after more than three/four years ought not to be entertained, as it results in unsettling the settled seniority position.

11. Mr. Ghose has further argued that once the rules specifically provide for selection on merit, in the absence of a laid down criteria, the Selection Committee had the authority to lay down the criteria to judge the relative merit of the candidates. In the absence of any allegation of bias or *mala fides*, no fault could be found with the recommendation of the selection committee made on 04.08.2008. His submission is that, even otherwise, the Petitioner cannot raise any grievance qua the selection of Respondent 2 and Respondent 3-who, even as per his own showing, had a much better service record/ACR gradings. The ACR grading of the candidates found 'fit' for promotion by the Selection Committee in its meeting held on 04.08.2008, from amongst the Private Secretaries/Administrative Officers (Judicial)/ Court Maters, and that of the Petitioner were as follows:

S. No	Name of Officer	Education qualification	ACR Remarks				
			2003	2004	2005	2006	2007
1.	Mr. Mukesh	B.A	Good	Good	Good	Good	Outstanding

	Bhambri						
2.	XXX						
3.	Mr. Kamlesh Chand	Matric	Very Good	Outstanding	Very Good	Very Good	Very Good
4.	Mr. Meenu Gupta	B.A	Very Good	Very Good	Very Good	Very Good	Very Good
5.	Mr. Pawan Kumar Kalra	M.A. B.AL	Good	Good	Good	Good	Very Good
6.	Mr. Atul Kumar Sharma	B.A. (Hons) L.L.B.	Good	Very Good	Very good (Jan 05 to 7.10.2005.)	Very Good	Very Good
7.	Mr. Pramod Kumar	B.A.	Outstanding	Outstanding	Outstanding	Outstanding	Outstanding
8.	XXX						
9.	XXX						
10.	XXX						
11.	XXX						
12.	XXX						

12. In response to the plea of the Petitioner regarding the promotion of Mukesh Bhambri, Usha Kiran Gupta and Ms Sadhna Gupta who, like the Petitioner, also had only 1 or 2 ACRs with grading of 'Very Good', the submission of the counsel for Respondent is, that it was for the Selection Committee to devise its own criteria to determine the relative merit of each of the candidates, and the mere comparison of ACRs cannot be used as the test to determine merit. He submits that, it will not be appropriate for this court to try and fathom the factors which weighed with the different Selection Committees in determining relative 'merit' from time to time, when there is no challenge to the promotions of any of the candidates. Placing reliance on the judgment of the Supreme Court in the case of *State of U.P. vs. Neeraj Awasthi & Ors. (2006) 1 SCC 667*, Mr.Ghose contends

that even if the Court were to find any irregularity in the selection of the aforesaid three persons, the same cannot be a ground for quashing the supersession of the Petitioner in August, 2008. He contends that Article 14 is a positive concept, and no equality can be claimed in the so called irregularity.

13. We have considered the submissions made by both sides, and with their assistance, perused the record.

14. Before dealing with the rival contentions of the parties, it would be appropriate to note that the applicable Rules capitulated hereinabove, in no uncertain terms provide that the determining factor for selection is merit alone. The core issue which, thus, needs to be decided in the present case is as to whether the decision of the Selection Committee which met on 04.08.2008-and more particularly the manner in which the seven candidates were selected to the post of Assistant Registrar by superseding the Petitioner, is fair, reasonable and in consonance with the Rules. The question which we need to address is whether the decision of the said selection can, in any manner, can be held to be not based on merit.

15. Once it is an undisputed position that the applicable service Rules provide for selection on the basis of 'merit', it follows as a necessary corollary, that the decision of the selection committee had to lay emphasis on merit alone, and seniority could not be a determinative factor in making the selection from amongst the eligible candidates falling within the zone of consideration. In our view, the only limited role which seniority has to play in such a selection process, is that the zone of consideration has to be prepared on the basis of seniority, whereafter, the field is levelled for all the

candidates being considered, irrespective of their *inter se* seniority, and their selection is made solely on the basis of relative 'merit'. Of course, the seniority would be maintained by the Selection Committee while preparing the panel of selected candidates i.e. those who are found 'fit' for promotion.

16. Once it is found that selection was to be based solely on merit, which was to be determined by the Selection Committee, we are unable to agree with the submission of the learned counsel for the Petitioner, that in the absence of a prescribed criteria, no supersession was permissible. The contention of the Petitioner that he being senior, he ought to have been selected in preference to Respondent nos.2 and 3-who were, admittedly, junior to him but more meritorious is liable to be rejected. We find no merit in the submission of the Petitioner's counsel, that in the absence of a prescribed benchmark, seniority alone should have been the determinative factor for selection. In our view, this submission would negate the very concept of 'merit' based selection-which the recruitment rule provides.

17. We have also considered the submission of the Petitioner that the DoPT's OM dated 8th April, 2002 while providing the framework within which the promotion by merit is to be judged, states that the element of merit shall be determined with reference to the relevant benchmark, and these candidates are to be only graded as 'fit' or 'unfit'-meaning thereby, that there is no room for supersession. We are, however, unable to agree with this submission of the Petitioner, as it has to be kept in mind that it is the Rule providing for selection on merit, which is the ultimate guiding factor for the Selection Committee, and not the OM. Once the Rule clearly provides for selection to be based on merit, it is for the Selection Committee

to devise its own criteria to decide in its discretion, as to what constitutes merit.

18. We may also refer to the decision dated 23.05.2014 of this Court in the case of ***R.P. Tolani v. Union of India & Ors*** on W.P.(C) No. 8639/2010, in which a Coordinate Bench of this Court upon consideration of a similar provision, namely, Rule 7 (C) of the Income Tax Appellate Tribunal Member (Recruitment and Conditions of Service Rules), 1963-providing for merit based selection, had rejected the plea to invoke the provisions of Office Memorandum dated 08.04.2002 into the specific recruitment rules for ITAT members. Reference may be made to paras 37,38 & 40 of the judgment in the case of ***R.P Tolani*** (supra) which read as follows:-

“37. In considering this issue, while the Court must remain conscious that the Office Memorandum in question marks a departure from the previous nomenclature, and prescribes a clear procedure for ‘selection’, as grading followed by seniority, it is important first and foremost to note the terms of Rule 7C, which is the primary rule applicable in this case. Rule 7C notes that the:

*“Selection Committee ...based on merit, shall
recommend persons for appointment as...
Vice-Presidents.” (emphasis supplied).”*

38. Thus, Rule 7C itself gives specific guidance on the criterion on which the Selection Committee is to base its decision, leaving little scope for either the Selection Committee to devise its own criterion (as the order of the CAT indicates) or incorporate the Office Memorandum dated 8th February, 2002 (as the petitioner argues). While, concededly, the Selection Committee may decide – in its discretion – what constitutes ‘merit’ for the purposes of appointing an individual to the post of Vice-President, the fact that the criterion is merit, and merit alone, is prescribed within Rule 7C, which is mandatory and cannot be departed from.

40. Yet, the crucial issue is that while this may be the case generally under the concerned rules, the Court must construe the text of the rules before it in each case, which are the specific law applicable, rather than incorporating general principles to bypass those precise prescriptions. Indeed, the Supreme Court has recognized at various point, in cases concerning service rules, the Court must “read the Rules as they are”, even more so when the rules are clear and explicit (Ref, Nair Service Society v. Dr. T. Beermasthan and Ors., (2009) 5 SCC 545, paragraphs 21, 41-2). In this case, Rule 7C states in no uncertain terms that the determining factor for the Selection Committee (while determining suitability of candidates for the post of Vice President of ITAT) is the merit of the candidates. Indeed, if it was the intention to include any other factors are determinative, or relevant, to the Selection Committee’s consideration, they would have been included as such. In reading the general selection procedure under the Office Memorandum dated 8th February, 2002, for Government posts, into the specific rules for ITAT members, would not cohere with the text of the rules.”

19. The third submission of the learned counsel for the Petitioner regarding discrimination vis-a-vis three candidates named hereinabove who were promoted with similar ACR gradings as the Petitioner, is equally bereft of merit. We find that none of the candidates whose cases have been referred to by the Petitioner, were selected in the Selection process which is in question. No reliance, therefore, can be placed on those cases, which pertain to a different selection process even otherwise, each selection is based on a comparative assessment of the merit of the candidates being considered in that selection process. The Petitioner cannot claim that merely because candidates with similar profile as his were selected in a subsequent or prior selection, he has any vested right to be selected, since the selection is based on comparative merit of the candidates falling within the zone of consideration. We also find force in the submission of the counsel for the Respondent that, even if-hypothetically, it is accepted that any person was

wrongly given promotion, the Petitioner cannot claim relief by introducing the concept of negative equality. In this regard, we may refer to the decision of the Supreme Court in the case of ***State of Bihar v. Kameshwar* [2000] 9 SCC 94**. In this decision the Supreme Court reiterated the well settled principle that the concept of equality is a positive concept which cannot be enforced in a negative manner Para 30 of this decision reads as under:-

“30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh v. NDMC [1996] 1SCR1154 held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed (Para 9):

“Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.”

Again in *Secy., Jaipur Development Authority, Jaipur v. Daulat Mai Jain* this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

“Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.”

20. The last plea raised by the Petitioner to contend that his uncommunicated ACRs for the years 2003 to 2005 and 2007 containing below benchmark grades of 'Good' ought to be ignored, is self contradictory. On the one hand, the Petitioner has contended that there was no prescribed benchmark for selection as on the date of the selection i.e. 4th August, 2008 and, on the other hand, he has contended that these ACRs contained below benchmark grading and, therefore, should have been ignored as they were not communicated. We find that selection was based solely on merit. The record shows that till 23.12.2009, there was no specifically provided benchmark and, thus, there was no question of any ACR being considered below benchmark. There being no specific benchmark, the selection was made by the Selection Committee by independently assessing the comparative merit of such candidate. The plea of the Petitioner for ignoring his ACRs for the years 2003 to 2005 & 2007 on the ground that these ACRs contained below Benchmark gradings, is also liable to be, and is rejected.

21. We cannot lose sight of the settled principle that in matters of selection, the primary responsibility is of the Selection Committee, and the Courts have a limited power of judicial review. The evaluation and assessment of merit by the Selection Committee is an administrative function, and unless bias or malafide is alleged, it is not for the Courts to sit in appeal over the decisions of the Selection Committee. It is not for the Court to examine the relative merits of the candidates. The Court cannot, and should not, tinker with the selections, merely because the Selection Committee has chosen not to give any reasons for selecting particular

candidates, and rejecting others. The record does not disclose a patent error, or arbitrary exercise of its authority by the selection committee.

We are fortified in our aforesaid conclusion by the observations of the Supreme Court in para 18 of the case of **Major General, IPS Dewan Versus Union of India & Ors. reported as (1995) 3 SCC 383**, which reads as under:-

“18. Sri Ramaswamy then relied upon the decision in The Manager, Government Branch Press and Anr. v. D.B. Belliappa in support of his submission that administrative orders affecting the rights of citizens should contain reasons therefore. We are afraid, the said principle cannot be extended to matters of selection. Unless the rules so require, the Selection Committee/Selection Board is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be. If the said decision is sought to be relied upon with respect to the adverse remarks made against the appellant, the attack should fail for the reason that the memo containing adverse remarks in this case does set out the particulars in support of the same. It is equally relevant to note that no allegation of mala fides or arbitrariness has been leveled against the Chief of the Army Staff who made the said remarks.” (emphasis supplied)

22. We also find force in the submission of the learned counsel for the Respondent, that the present Petition is liable to be rejected on the ground of delay and laches. The impugned selection pertains to August 2008, and the present Petition was filed after more than 4 years in November 2012.

23. We may also refer to the decision of the Supreme Court in the case of **K.R. Mudgal v. R.P. Singh** 18 (1986) 4 SCC 531, wherein the Supreme Court while dealing with a challenge to a seniority list held as under:-

“2 A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attaches to his post peacefully and without any sense of insecurity.....”

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7.....Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

Reference may also be made to the decision of the Supreme Court in the case of **Mohd. Siddiq Ali v. High Court of A.P** (2005) 13 SCC 207, where the Supreme Court upheld the rejection of a similar claim by the High court on the ground of delay. Para 9 of the decision reads as under:-

9. In Civil Appeal No. 3006 of 2001, the writ petition was dismissed by the High Court on the ground that though the notification had been issued on 23.10.1996, but the writ petition wherein reservation in favour of women was challenged was filed in November, 1998 and, therefore, the writ petition was highly belated. Learned Counsel for the appellant has submitted that the writ petition should not have been dismissed on the ground of laches. In support of his submission learned counsel has placed reliance on Ramchandra Shankar Deodhar v. State of Maharashtra, wherein it has been held that the Rule which says that a court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable

rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case. On the strength of the aforesaid authority it is submitted that the High Court has erred in dismissing the writ petition on the ground of laches. We are unable to accept the contention raised. In the authority cited, the dispute related to inter se seniority of Mamlatdars/Tehsildars in the newly constituted State of Bombay by virtue of the provisions of the States Reorganization Act, 1956. The inter se seniority of persons holding the same rank has a great bearing at the stage of promotion to a higher post and in such a situation it was held that in the facts and circumstances of the case, the writ petition could not be dismissed on the ground of laches. In the present case the persons selected had already joined as District Munsiffs long back and the challenge has been raised to their selection after the decision had been rendered by the A.P. High Court Mohd. Iqbal Ahmad v. High Court of A.P. on 31.8.1998. We, therefore, do not find any infirmity in the order passed by the High Court.

The Petitioner, for reasons best known to him chose to wait for over 4 years and has, belatedly, approached the court during which period, many other employees may have earned further promotions and stolen a march over the Petitioner. We also find that except for some intermittent periods, during which the Petitioner's son was unwell, there is no justification at all given by the Petitioner for this inordinate delay in challenging the selection process. In view of the aforesaid settled legal position, the present petition is liable to be dismissed on the ground of delay and laches, as well.

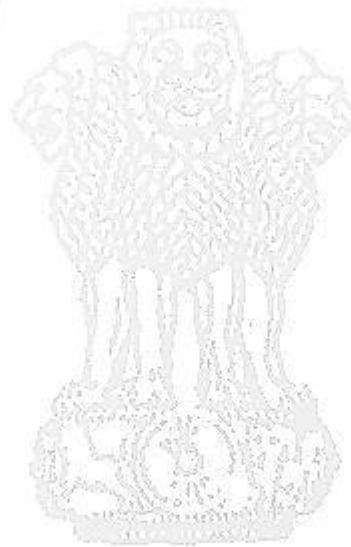
24. For all the aforesaid reasons, it cannot be said that there was any infirmity in the decision of Selection Committee taken on 4th August, 2008.

25. We find no merit in the present Petition and the same is dismissed, with no order as to costs.

REKHA PALLI, J

VIPIN SANGHI, J.

AUGUST 17, 2017
gm/saurabh



सत्यमेव जयते