

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgement Reserved on 28.11.2019****Judgment Delivered on 15/1/2020****WA No. 14 of 2018**

(Arising out of order dated 12.10.2017 passed by learned Single Judge in WP No.2314/2004)

- Dr. K. K. Gupta, S/o Shri S.L. Gupta, Aged about 57 years Presently working as Deputy Inspector General of Jails, Jail Head Quarter, Raipur (Chhattisgarh).

---- Appellant**Versus**

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

---- Respondents

For Appellant	:	Mr. Sandeep Dubey, Advocate
For Respondent No.1 to 3	:	Mr. S. Agrawal, Dy. Adv. General
For Respondent No.5	:	Mr. Aman Pandey, Advocate on behalf of Mr. Ashish Shrivastava, Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV Order****Per Parth Prateem Sahu, J**

1. Challenge in this appeal is to the order dated 12.10.2017 passed by learned Single Judge in Writ Petition No.2314/2004 thereby declining to interfere with the order of promotion of Annexure R-4 on the post of Deputy Inspector General (Jails) on recommendation

of the Departmental Promotion Committee (for short 'the DPC').

2. Brief facts relevant for disposal of this appeal are that the appellant and respondent No.4 were working as 'Class-I Officer' with respondent No.1. A meeting of the DPC consisting of the Principal Secretary, Ministry of Home; the Director General (Jails); the Superintendent & Additional Secretary (Home) and the Chairman, Chhattisgarh Public Service Commission, was held on 8.1.2004 to consider the case of petitioner and respondent No.4 for promotion to the post of 'Deputy Inspector General (Jails)'. After evaluating and assessing the service record of petitioner/appellant & respondent No.4, the DPC found that ACRs grading of appellant and respondent No.4 are equal and being so, recommended name of respondent No.4, who was senior in the cadre, for grant of promotion on the post of Deputy Inspector General (Jails). Feeling dissatisfied with the said recommendation, firstly the appellant sent a legal notice to the respondent authorities concerned and thereafter filed a writ petition before the High Court. After hearing learned counsel for both the sides, the learned Single Judge dismissed the writ petition vide order impugned by recording a finding that the petitioner failed to make out a case for interference in the recommendation made by the DPC.
3. Mr. Sandeep Dubey, learned counsel for appellant submits that learned Single Judge failed to consider that the DPC has downgraded ACR grading of the appellant without assigning any reason. Adverse entry in the ACRs, if any, has never been communicated to the appellant in accordance with law laid down by

Hon'ble Supreme Court in *Saji K Sam v. Union of India & ors* reported in (2008) 8 SCC 725. He further submits that the DPC failed to properly appreciate the ACRs of the candidates who were within the zone of consideration for promotion on the post of Dy. Inspector General (Jail). The DPC was not having any authority or jurisdiction to modify or alter ACR grading of appellant. The DPC assessed the ACR grading for the period from 1.10.2002 to 31.3.2003 and the District Collector and the Director General of Police have categorized grading of appellant for the aforesaid period as 'outstanding', but it has been taken as 'very good' by the DPC, which amounts to downgrading of ACR of appellant, without assigning any reason and without affording opportunity of hearing.

4. Per contra, Mr. Sudeep Agrawal, learned Deputy Advocate General representing the State submits that promotion of appellant and respondent No.4 is governed by the Promotion Rules, 2003. After an overall assessment of service records of appellant & respondent No.4, who were within the zone of consideration for promotion, the DPC has rightly arrived at a conclusion that as the ACR grading of both the candidates are similar, therefore, the candidate senior in cadre i.e. respondent No.4, is entitled for promotion. He submits that the DPC has not committed any error in decision making process while making recommendation for promotion to the post of Dy. Inspector General (Jails). He submits that only ground raised by appellant is that ACR of appellant has been downgraded from 'outstanding' to 'very good' by the DPC, which is on the basis of consideration of overall service record of employee/officer who was

under the zone of consideration for promotion. He also submits that the DPC has not assigned reason for not accepting the grading of appellant for the period from 1.4.2002 to 30.9.2002 and 1.10.2002 to 31.3.2003, which was based on overall consideration of service record. He further submits that learned Single Judge after taking note of various rulings of Hon'ble Supreme Court has passed the impugned order which does not call for any interference in exercise of appellate jurisdiction. He also submits that after evaluating ACRs of the officer falling within the zone of consideration for promotion, the DPC can award grading based on overall performance and records of officer and for this the DPC is not required to assign any reason.

5. Mr. Pandey, learned counsel appearing on behalf of respondent Chhattisgarh Public Service Commission submits that learned Single Judge has not committed any error in dismissing writ petition filed by petitioner/appellant herein. While reiterating the arguments advanced by learned counsel for respondent No.1 to 3, he contended that the DPC is not required to assign any reason for grading an employee who is within the zone of consideration for promotion because it has the authority and jurisdiction to assess and grade an employee based on service record available before it for consideration in its entirety.
6. We have heard learned counsel for the parties and perused the record.
7. Promotion, which is subject-matter of appeal, is from Class-I to Class-I of Higher Grade and the same is governed by the CG

Public Service (Promotion) Rules, 2003 (for short 'the Rules, 2003'). Rule 4 of the Rules, 2003 provides for determination of basis for promotion and the determination of basis of promotion is provided under Rule 4 (2) which says that promotion from Class I to higher pay scale of Class I posts shall be made on the basis of "merit-cum-seniority". Rule 7 of the Rules, 2003 deals with promotion on the basis of merit-cum-seniority. Relevant part of Rule 7 is extracted below for ready reference;-

” (1) Where promotion is to be made on the basis of merit-cum-seniority, the zone of consideration, that is the number of public servants to be considered for promotion out of those eligible public servants in the feeder cadre/part of the service/pay scale of post shall be as under :-

No. of vacancies to be filled during the year	No. of persons to be considered
1	5
2	8
3	10
4	12
5	14
6	16

The formula for the further calculation shall be that the '4' be added to double the number of anticipated vacancies.

(3) The names of only such public servants shall be considered for promotion who have completed the requisite number of years of service in the feeder

cadre/part of the service/pay scale of post according to the Recruitment Rules for promotion and who are within the zone of consideration. In addition to this, in view of inclusion, in the select list, the names of two public servants or 25 percent of the number of the public servants included in select list whichever is more, the names of the required number of the public servants who are in the zone of consideration shall be considered for each category to fill up the unforeseen vacancies occurring during the course of the aforesaid period.

(5) The meeting of the Departmental Promotion/Screening Committee shall be held every year. It shall consider the suitability of the public servant for promotion separately with reference to the vacancies of each previous year starting with the earliest year onwards. The Departmental Promotion Committee/Screening Committee shall consider, the suitability of the public servants for promotion to fill up the unfilled vacancies of the earlier year or years separately and prepare the select list for the relevant year accordingly. Thereafter, the Departmental Promotion Committee/Screening Committee shall consider the suitability of the public servants for promotion to fill up the existing and anticipated vacancies of the current year.

(6) The Departmental Promotion/Screening Committee shall assess the suitability of the public servants for promotion on the basis of their service record and with particular reference to the Annual Confidential Reports (ACRs) for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the Departmental Promotion/Screening Committee shall see the record with particular reference to the ACRs for the years equal to the required qualifying service.

(7) When one or more ACRs are not available for any reason for the relevant period, the Departmental Promotion/Screening Committee shall consider the ACRs of the years preceding the period in question.

(8) For the eligibility for promotion from Class I to higher pay scale of Class I posts, the benchmark grade shall be "Very Good".

(9) The Departmental Promotion/Screening Committee shall make a relative/comparative assessment of the merits of public servants who are within the zone of consideration and make an overall grading of the public servants' merit on the basis of their service records and place them in the categories as "Outstanding", "Very-Good", "Good", "Average" and "Poor" as the case may be. However, only those public servants who are graded as "Very Good" and above will be included in the select list, by placing the public servants graded as "Outstanding" on top followed by those graded as "Very-Good", subject to availability of vacancies, with the public servants with the same grading maintaining their *inter-se* seniority in the feeder cadre/part of the service/pay scales of post."

8. Perusal of Rule 7 (8) of the Rules, 2003 makes it clear that for the eligibility for promotion from Class I to higher pay scale of Class I posts, the benchmark grade shall be "Very Good". As per Rule 7 (9) of the Rules, 2003, the Departmental Promotion Committee shall make a relative/comparative assessment of the merits of public servants who are within the zone of consideration and make an overall grading of the public servants' merit on the basis of their service records and place them in the categories as

"Outstanding", "Very-Good", "Good", "Average" and "Poor" as the case may be.

9. Annexure P-23 filed by appellant along with writ petition are the minutes of meeting of the DPC held on 8.1.2004 and a glance of Clause (7) of this document would demonstrate that the DPC after evaluating service records of both the candidates, who were within the zone of consideration, has arrived at a conclusion that grading awarded to appellant for the period from 1.4.2002 to 30.9.2002 is 'very good' for the reasons mentioned therein and the grading awarded to the appellant for the period from 1.10.2002 to 31.3.2003 is also 'very good'.
10. So far as the grading awarded for the period from 1.4.2002 to 30.9.2002 is concerned, the DPC has considered that the Reviewing Authority has not assigned any reason for upgrading the grading awarded by the Reporting Authority i.e. Collector, and therefore the grading 'outstanding' awarded by the Reviewing Authority has not been considered. Likewise, for the subsequent period the Additional Chief Secretary awarded grading 'very good', whereas the Reporting Authority awarded grade as 'outstanding', but no reason for the same was mentioned. When any employee is graded as 'outstanding', the authority grading the said employee as 'outstanding' is required to assign cogent reasons for grading him such. But, in the case at hand, no cogent reason was mentioned in recording

'outstanding' for both the periods. The DPC therefore took into consideration grade 'very good', which is benchmark for considering an employee of Class-I for promotion to higher class or post. Looking to the overall proceedings recorded by the DPC in Annexure P-23, we do not find any error in the decision making process.

11. Taking into consideration various decisions of Hon'ble Supreme Court, the learned Single Judge has held thus;-

“12. In the matter of **Col. Avtar Singh Sekhon v. Union of India and others**¹, 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**², 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

1 1980 (Supp) SCC 562

2 (1997) 9 SCC 287

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 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**³ 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

3 1993 Supp (4) SCC 441

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 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 another**⁴, 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 others**⁵, 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 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. Nayyar**⁶, 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

5 (2003) 9 SCC 592

6 (2014) 14 SCC 370

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 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**⁷.”

12. As per the law enunciated by Hon’ble Supreme Court in the matters of promotion, the decision making process is to be judged and not the decision itself.

13. We do not find any force in the submission of learned counsel for appellant that ACRs grading of appellant has

⁷ (2016) 1 SCC 495

been downgraded without assigning any reason, for the reason that the DPC considering the fact that the Reviewing Authority has not assigned any reason for awarding higher grading than awarded by the Reporting Authority, has decided not to take into consideration the grading awarded by the Reviewing Authority and further the reporting authority for grading 'outstanding' has not assigned cogent reasons. The DPC is an expert body, the members of which are fully equipped and qualified to deal with the assessment and gradation of the employees/officers, who are within the zone of consideration for promotion, on the basis of their performance as reflected in their entire service record including the ACRs. It is settled law that the assessment and grading made by the DPC cannot be faulted or interfered with unless it is established that the Committee has acted in a mala fide or capricious manner. It is also well settled that the Court cannot sit over decision of the DPC as a Court of appeal unless the decision is assailed as being vitiated by mala fides or on the ground of its being arbitrary. It is not the case of appellant herein that recommendation made by the DPC is vitiated by mala fides.

14. Hon'ble Supreme Court in the matter of **UPSC v. M Sathiya Priyan & ors** reported in (2018) 15 SCC 796 has held thus;-

“17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of the UPSC and is duly represented by the officers of the Central Government and the State Government who

have expertise in the matter. In our considered opinion, when a High Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to the CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the Courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the Court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body, i.e., the Selection Committee. The Courts have very limited scope of judicial review in such matters.

18. We are conscious of the fact that the expert body's opinion may not deserve acceptance in all circumstances and hence it may not be proper to say that the expert body's opinion is not subject to judicial review in all circumstances. In our constitutional scheme, the decision of the Selection Committee/ Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind oneself of the famous words of Lord Acton "Power tends to corrupt,

and absolute power corrupts absolutely". The aforementioned principle has to be kept in mind while deciding such cases. However, in the matter on hand, it is abundantly clear from the affidavit filed by UPSC that the Selection Committee which is nothing but an expert body had carefully examined and scrutinized the experience, Annual Confidential Reports and other relevant factors which were required to be considered before selecting the eligible candidates for IPS. The Selection Committee had in fact scrutinized the merits and demerits of each candidate taking into consideration the various factors as required, and its recommendations were sent to UPSC. It is the settled legal position that the courts have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraints - self-imposed, undoubtedly- of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become ruderless."

15. If the facts of present case are examined in the light of above law laid down by Hon'ble Supreme Court, it is apparent that the DPC while considering the grading awarded by the Reporting Authority & the Reviewing Authority had given sufficient reasons for not accepting the up-gradation done by the Reviewing Authority by awarding 'outstanding' grade and also the Reporting Authority for grading 'outstanding' to appellant was without assigning any special reason. The

DPC consisting of expert senior officials after evaluating merits of appellant & respondent No.4, found respondent No.4 on the basis of his seniority in the cadre, to be more suitable for promotion on the post of Dy. Inspector General (Jail), which cannot be said to be erroneous in any manner.

16. In view of above facts and circumstances emerging from the records and also keeping in mind the law laid down by Hon'ble Supreme Court for dealing with issue of promotion of an employee/officer, particularly of Class-I Grade, we do not find any illegality or infirmity in the order impugned passed by learned Single Judge dismissing writ petition filed by petitioner/appellant herein.

17. For the reasons stated above, writ appeal fails and is dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-