

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

Judgment reserved on: 10.10.2022.

% **Judgment delivered on: 31.10.2022**

+ W.P.(C) 8133/2006

RAM NARAIN PRASAD Petitioner

Through: Petitioner in person.

versus

UOI & ORS. Respondents

Through: Ms. Arunima Dwivedi, CGSC with
Mr. Ved Prakash, Advocate for
Respondent/ UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The instant writ petition filed is an old matter. The Petitioner before this Court has filed the present writ petition being aggrieved by the order dated 31.03.2006 (“**Impugned Order**”) passed by the Hon’ble Central Administrative Tribunal, Principal Bench, New Delhi (“**CAT**”) in O.A. No. 1329/2005. The CAT *vide* the Impugned Order dismissed the O.A. preferred by the Petitioner declining the Petitioner’s prayer to direct the Respondents to grant second financial upgradation to the Petitioner under the Assured Career Progression Scheme (ACP Scheme).

2. The undisputed facts of the case reveal that the Petitioner was

appointed to the post of Food Inspector by direct recruitment in the pay scale of Rs. 5000-150-8000 (revised) under Rule 8 of the Prevention of Food Adulteration Rules, 1955 (“**PFA Rules**”). The Petitioner joined the post of food inspector on 09.11.1978. Thereafter, on 30.04.2983, the Petitioner was appointed as Food Inspector for the local area as notified by the Government of India.

3. On 26.09.2000, the Petitioner was granted first financial upgradation under the ACP Scheme as per promotional grade/hierarchy made by the Department from Food Inspector (Rs. 5000-150-8000) to Senior Food Inspector (Rs. 6500-200-10500).

4. It is undisputed that the Petitioner completed 24 years of regular service on 09.11.2002. It is the case of the Petitioner that upon completion of 24 years, other Food Inspectors were granted second financial upgradation was per ACP Scheme however the Petitioner was not granted the same. The Petitioner sent a representation to the Director Administration (HQ), Directorate General of Health Services (“**DGHS**”), requesting for grant of second ACP in the scale of Rs. 10,000-325-15200/-. However, this request of the Petitioner was not granted.

5. The Petitioner’s request for second financial upgradation under the ACP Scheme having been denied, the Petitioner filed O.A. No. 2246/2004 before the CAT. The Ld. CAT *vide* order dated 21.04.2005 disposed of the said O.A. with a direction to the Respondents to convene a meeting of the Screening Committee to consider grant of second financial upgradation to the Petitioner under the ACP Scheme and take a decision in the matter within two months and convey the decision taken to the Petitioner. The relevant paragraphs of the order dated 21.04.2005 are reproduced as under:

“5. Accordingly, we direct the respondents to convene the meeting of the Screening Committee for considering the grant of second financial upgradation under ACP scheme to the applicant and take a decision in the matter within a period of two months from the date on which the copy of this order is received by them. We further direct the respondents to convey to the applicant the decision taken by them in this regard immediately. The applicant has undertaken to serve a copy of this order on the respondents within one week. In case, the respondents have already taken a decision in the matter, the same will be conveyed to the applicant within two weeks from the date on which the copy of the order is delivered to the respondents. In that event, it will be open for the applicant to redress his grievance against the order in proper proceedings in accordance with law.

6. The present O.A. is disposed of in terms of the above orders. Parties to bear their own costs.”

6. The Respondents *vide* office memorandum dated 04.05.2005 informed the Petitioner that they had implemented the directions of the Ld. CAT and informed him that his grant of second financial upgradation under the ACP Scheme was considered by the Screening Committee Constituted for the purpose, however, the Screening Committee did not find the Petitioner suitable for the grant of second financial upgradation. The office memorandum dated 04.05.2005 reads as under:

*“No. C. 18011/2/2004 – Admn. II
Directorate General of Health Services
ADMN. II Section*

*Nirman Bhavan, New Delhi,
Dated the 4th May, 2005*

OFFICE MEMORANDUM

*Sub:- O.A. no. 2246/2004 filed by Shri R. N. Prasad, Food Inspector [PFA] v/s UOI – Grant of second financial upgradation under ACP scheme – reg.
In compliance with the directions of the Central*

Administrative Tribunal, Principal Bench order dated 21-4-05 in O.A. No. 2246/2004, the undersigned is directed to inform Shri Ram Narain Prasad, Food Inspector, that his case for grant of second financial upgradation under Assured Career Progression scheme was considered by the Screening Committee constituted for the purpose in its meeting held on 22-02-05 but the Committee did not find him suitable for grant of second financial upgradation.

-Sd-

*[SHIV BHAGWAN]
Director Admn. [SB]
2301 81 64*

To,

*Shri Ram Narain Prasad,
Food Inspector [PFA],
DTE.G.H.S.
Nirman Bhavan, New Delhi.”*

7. The Petitioner, being aggrieved by the aforesaid O.M. preferred an O.A. bearing O.A. Number 1329/2005 before the CAT praying for the following reliefs:

“(a) Issue a order/ directions for quashing the action of the Respondent’s i.e. impugned order dated 4/10th May, 2005.

(b) Issue an order/directions to the respondents to disclose/clarify the reasons that why the Screening Committee is not finding the applicant fit for grant of second financial upgradation under the scheme. As this is the second time O.A. filed before the Hon’able Tribunal in the aforesaid matter the respondent’s may kindly be also directed to reconsider and grant me second financial upgradation as per rules under the ACP Scheme.

(c) Issue a order/ direction to the respondents to grant me the Second financial Upgradation under Assured Career Progression Scheme as per rules i.e. in the pay scale of Rs. 10000-325-15200 as per the clarification given at sr. no. 32 by the DOP&T in OM No. 35034/1/97-Esst (D) dated 10-2-2000.

(d) Issue any other orders or directions, which the Hon’ble

Tribunal may deem, fit and appropriate proper in the facts and circumstances of the case.”

8. The CAT *vide* order dated 31.03.2006 dismissed the O.A. preferred by the Petitioner. Paragraphs 6 to Paragraph 12 of the Impugned Order reads as under:

“6. The main grievance of the applicant is that he was not found fit by the Screening Committee for grant of second financial upgradation under ACP and further that the grounds for the Screening Committee not having found him suitable have not been disclosed/conveyed to him.

7. It would be relevant at this point to see the main provisions of ACP Scheme for the Central Government Civilian Employees as contained in the DOP&T's OM dated 9 8.1999.

8. *Paras 6.1 and 6.2 of the said Scheme read as under:*

“6.1 A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.

6.2 The composition of the Screening Committee shall be the same as that of the DC prescribed under the relevant Recruitment/Service Rules for regular promotion to the higher grade to which financial upgradation is to be granted. However, in cases where DPC as per the prescribed rules is headed by the Chairman/Member of the UPSC, the Screening Committee under the ACP Scheme shall, instead, be headed by the Secretary or an officer of equivalent rank of the concerned Ministry/Department.”

9. It is clear from the above provisions that the composition and function of the Screening Committee shall be the same as that

of DPC prescribed under the relevant recruitment/service rules for regular promotion. The case of the applicant for grant of second financial upgradation under ACP was considered by duly constituted Screening Committee which did not find him suitable. Thus, no fault can be found with the composition of the Screening Committee.

*10. We now take the next issue regarding the non-disclosing of the reasons which led the said Committee to not finding the applicant suitable for grant of second financial upgradation. The Screening Committee has the same locus standi as Departmental Promotion Committee, and it is settled law that a Selection Committee/DPC being administrative in nature can evolve its own classification which may be at variance with the gradation given in the ACRs and it is under no obligation to record reasons for its decision when there is no rule or regulation obligating the Selection Committee to record the reasons. This has been held by the Apex Court in the case titled **U.P.S.C Vs. K.Rajaiah & Ors.(2005(1) S.C.Services Law Judgments 555**. In this case, the 1st respondent who belonged to A.P. Police Service had filed an application before the Central Administrative Tribunal, Hyderabad Bench questioning the notifications regarding selection and appointment of certain police officers of Andra Pradesh State Cadre to IPS against certain vacancies. The case of the respondent was that despite his / outstanding service he had not been selected whereas officers having inferior merit were selected. The main contention before the Tribunal was that there was no proper assessment of merit by the Selection Committee. The Tribunal did not accept the contention of the respondents and dismissed the application. Thereafter, the first respondent filed writ petition before the Hon'ble High Court of Andhra Pradesh. The "Hon'ble High Court allowed the writ petition and directed the UPSC to constitute a fresh Selection Committee. Being aggrieved by the said order, the UPSC and UOI went before the Hon'ble Supreme Court through SLP. The Hon'ble Supreme Court observed that the power to classify as Outstanding, Very Good etc. is vested with the Selection Committee and that this is a function incidental to the selection process. Further, the*

selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs. "This is what has been done in the instant case... ..Such classification is within the prerogative of the Selection Committee and no reason need be recorded....

Normally the Court will not interfere with the evaluation done by the Commission on a consideration of relevant material."

11. Having regard to the general principles of process of selection and the considerations to be borne in mind by the Selection/Screening Committee, we cannot find fault either with the decision or with the procedure of the Screening Committee in this case. It is also not incumbent that the reasons for non-selection have to be conveyed to persons considered/not selected.

12. In view of the aforesaid discussion, the O.A. fails and is dismissed. No costs."

9. The aforesaid order passed by the CAT reveals that the CAT has looked into the ACP Scheme and the composition and functions to be performed by the Screening Committee constituted to determine the grant of benefits under the ACP Scheme. The CAT has relied upon the decision in **UPSC v. K. Rajaiah, (2005) 10 SCC 15** to hold that the Screening Committee being administrative in nature is under no obligation to record the reasons for its decisions when there is no rule/regulation obligating the committee to record its reasons. Based on these principles, the CAT found no fault with the O.M. dated 04.05.2005 or the procedure of the screening committee.

10. The Petitioner herein, being aggrieved by the aforesaid order passed by the CAT in O.A. 1329/2005 has preferred a writ petition before this Court praying for the following reliefs:

“(a) Issue order, directions in the nature of mandamus to set aside the impugned order dated 31-3-2006 in OA No. 1329/2005 passed by the Hon’ble Learned Tribunal.

(b) Issue direction for quashing the action of the respondent’s i.e. impugned order OM dated 4th/10 May, 2005 regarding not granting the second financial up gradation to the Petitioner under the Assured Career Progression Scheme.

(c) Issue any other appropriate order, directions, which the Hon’ble Court may deem fit and appropriate proper to the facts and circumstances of the case.”

11. It is contended by the Petitioner that the respondents have not brought any concrete material in support of any adverse remarks in the ACR, nor have any adverse remarks been communicated to the Petitioner. He also contends that there is no indication about the composition of the screening committee and no indication regarding how many years CRs were seen and what grading was given for each of those years which led the committee to arrive at the overall grading which has been done by it.

12. It is the case of the Petitioners that the CAT has not recorded any adverse remarks and overall grading in ACR against the petitioner in the Impugned Order except recording the composition and function of the Screening Committee. It is his case that having completed 24 years of regular service, he is entitled to second financial upgradation under the ACP Scheme.

13. Learned Counsel for the Respondent has produced before this Court the Minutes of the Meeting of the Screening Committee held on 22.02.2005, on the basis of which the O.M dated 04.05.2005 was issued to the Petitioner. It is not disputed by the Petitioner that the confidential dossiers of the Petitioner and minutes of the committee meeting were shown to the CAT during the proceedings for OA 1329/2005. The Minutes of the Meeting of the Screening

Committee held on 22.02.2005 are reproduced as under:

**“DIRECTORATE GENERAL OF HEALTH SERVICES
(ADMN. II SECTION)**

Sub: Minutes of the Meeting of the Screening Committee to be held on 22.2.2005 at 4.30 P.M. under the chairmanship of Dr. S. Badrinath, DDG (M) to consider a proposal for grant of 2nd financial upgradation under ACP to Sh. R. N. Prasad, Food Inspector, PFA Division.

The meeting was held as scheduled. The following officers attended the meeting

- | | |
|---|----------|
| i.) Dr.S.Badrinath, DDG (M) | Chairman |
| ii.) Shri K.K.Mittal, Director Admn. (HQ) | Member |
| iii) Dr.D.Chattopadhyaya Asstt., Dir. General (PFA) | Member |
| iv) Shri Karnail Singh Director Admn. (KS) | Member |

2. The Committee was informed:-

- a) that the post of Food Inspector in the PFA Division is in the scale of pay of Rs. 5000-8000/-. It is a Group 'C' post;
- b) that Sh. R.N. Prasad, Food Inspector was granted 1st financial upgradation in the scale of Rs. 6500-10,500/- w.e.f. 9.8.1999 vide Office Order No. A. 43020/3/2000- Admn. II dated 26.9.2000;
- c) that the post of Sr. Food Inspector in the scale of pay of Rs. 650-1200 (pre-revised) was created by the Min. of Health & F.W. in Jan. 1975. However, this post was subsequently abolished by the Ministry in July, 1986. The post of Sr. Food Inspector was a promotional post for the post of Food Inspector. However, as stated above, this was abolished in 1986;
- d) that question of scale of pay which should be considered for grant of 2nd financial upgradation to the Food Inspectors in the Dte.GHS was examined in consultation with Min. of Health & F.W. and DOPT. DOPT advised that Food Inspectors need to be given 2nd ACP in the grade of Rs. 7450-11500; and

e) that Sh. R.N. Prasad was eligible for consideration for grant of 2nd financial upgradation under ACP Scheme w.e.f. 9.11.2002. (on completion of 24 years of service from the date of his initial appointment as a direct recruit)

3. The Committee noted that Shri Prasad was eligible for consideration for grant of 2nd financial upgradation under the ACP Scheme w.e.f. 9.11.2002 as he completed 24 years of service on this date. Therefore, the ACRs of five year period from 1998-99 to 2002-03) were taken into consideration for the purpose of assessment of his ACRs. The Committee, however, noted that the ACR for the period of 1998-99 was not available. The Committee, therefore, decided to peruse one ACR of the preceding year i.e. 1997-98. Since the ACR for the year 1997-98 was also not available, the Committee further decided to peruse the ACR for the 1996-97 so as to make assessment of ACRs of five years for making a suitable recommendation. The Committee finally based its recommendation after perusing the ACRs for 1996-97, 1999-00, 2000-01, 2001-02 and 2002-03. The Committee perused the ACRs for these five years very carefully and made its own assessment. The assessment made by the Committee is at Annexure-l.

Based on its own assessment, the Committee did not found Shri R.N. Prasad Food Inspector, suitable for grant of 2nd financial upgradation in the scale of Rs.7450-11.500 under the ACP Scheme. The Committee was informed that Sh. R.N. Prasad, Food Inspector, PFA Division was clear from vigilance angle.

**-sd-
(K.K. MITTAL)
DIRECTOR
ADMN (HQ)
MEMBER**

**-sd-
(KARNAIL
SINGH)
DIRECTOR
ADMN. (KS)
MEMBER**

**-sd-
(DR.D.
CHATTOPADHYA)
ASSTT. DIRECTOR
GEN. (PFA)
MEMER**

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14. On a perusal of the above, it is clear the meeting of the Screening Committee was chaired by Dr. S. Badrinath, DDG (M) and consisted of Shri

K.K. Mittal, Director Admn. (HQ), Dr. D. Chattopadhyaya, Asstt. Dir. General (PFA) and Shri Karnail Singh, Director Admn. (KS) as members of the committee. The Committee convened to consider the proposal for grant of second financial upgradation under ACP scheme to the Petitioner on 22.02.2005 at 4:30 PM. The Committee perused the ACRs of the Petitioner for the years 1996-97, 1999-00, 2000-01, 2001-02 and 2002-03 to make its assessment. The Assessment made by the Committee is reproduced as under:

“Assessment of ACRs of Shri R. N. Prasad, Food Inspector, PFA Division

2002-2003:

Reporting Officer: *The Reporting Officer has not agreed with resume given by Shri N Prasad and has stated that he (Shri Prasad) was given specific duties and position was further clarified in August, 2000. He has stated against Cols. 3, 4, 5, and 7 that Shri Prasad has not carried out duties assigned to him and is not possible to comment. He has also stated that Shri Prasad does not fit in any of the categories against above Columns. In Col No. 13, which relates to grading the reporting officer has stated that Shri Prasad has not carried out the work assigned, and it is not possible to grade him in any category. No grading has been given.*

Reviewing Officer: *The Reviewing Officer has agreed with the comments of the reporting Officer.*

Assessment of Screening Committee:

The committee noted that Shri RN Prasad, Food Inspector in his resume stated that has written to DGHS/Secy/HFM for his duties and the same has not been clarified till date. The Committee felt that while Shri Prasad had

every right to pursue his grievance with the appropriate authorities, but at the same time as a Govt. Servant he was supposed to perform whatever official duties were assigned to him by his senior officers. The Committee, therefore, found the assessment of Shri Prasad not upto the mark.

2001-2002:

Reporting Officer: *The Reporting Officer has agreed that though Shri R.N. Prasad was not assigned the work of Food Inspector as stated in his resume, however, a view was taken at the level of Secretary (Health) about 20 years back that Food Inspectors of the Central Govt. would not carry out the duties of Food Inspectors. Therefore Shri R.N. Prasad was attached to the Tech. Officer (PFA) to work under his supervision. The Reporting Officer has further stated that Shri Prasad has not carried out the work assigned to him. In Col.13 which relates to grading, the Reporting Officer has stated that Shri Prasad has not carried out the work assigned to him and he wanted to carry out the work of Food Inspector only. No grading has been given.*

Reviewing Officer *The Reviewing Officer has agreed with the comments of the Reporting Officer. However, at the same time he has graded Shri Prasad as "Average" worker.*

Assessment of Screening Committee:

The Committee noted that Shri R.N. Prasad, Food Inspector in his resume stated that he has not been assigned / clarified his duties in day to day functioning of Food Inspector. He also

stated that he has written to the authorities upto HFM but till date he has not received any reply. The Committee felt that while Shri Prasad had every right to pursue his grievance with the appropriate authorities, but at the same time as a Govt. Servant he was supposed to perform whatever official duties were assigned to him by his senior officers. The Committee, therefore, found the assessment of Shri Prasad not upto the mark. The Committee also found that the grading given by Reviewing Officer as "Average", was not consistent with the comments of the Reporting Officer.

2000-2001:

Reporting Officer: *The Reporting Officer has agreed that though Shri R.N. Prasad was not assigned the work of Food Inspector as stated in his resume, however, a view was taken at the level of Secretary (Health) about 20 years back that Food Inspectors of the Central Govt. would not carry out the duties of Food Inspectors. Therefore, Shri R.N. Prasad was attached to the Tech. Officer (PFA) to work under his supervision. The Reporting Officer has further stated that Shri Prasad has not carried out the work assigned to him. In Col. 13 which relates to grading, the Reporting Officer has stated that Shri Prasad has not carried out the work assigned to him and that he wanted to carry out the work of Food Inspector only. No grading was given.*

Reviewing Officer *The Reviewing Officer retired and his views could not be recorded. (Necessary certificate has been recorded by office in this regard.)*

Assessment of Screening Committee:

The Committee noted that Shri R.N. Prasad, Food Inspector in his resume stated that he has not been assigned / clarified his duties in day to day functioning of Food Inspector. He also stated that he has reminded the authorities but not clarified/assigned. The Committee felt that while Shri Prasad had every right to pursue his grievance with the appropriate authorities, but at the same time as a Govt. Servant he was supposed to perform whatever official duties were assigned to him by his senior officers. The performance of Shri Prasad was not found by the Committee upto the mark.

1999-2000

Reporting Officer: *The Reporting Officer has agreed that though Shri R.N. Prasad was not assigned the work of Food Inspector as stated in his resume, however, a view was taken at the level of Secretary (Health) about 20 years back that Food Inspectors of the Central Govt. would not carry out the duties of Food Inspectors. Therefore, Shri R.N. Prasad was attached to the Tech. Officer (PFA) to work under his supervision. The Reporting Officer has further stated that Shri Prasad has not carried out the work assigned to him. In Col.13 which relates to grading, the Reporting Officer has stated that Shri Prasad has not carried out the work assigned to him and he wanted to carry out the work of Food Inspector only. No grading was given.*

Reviewing Officer *The Reviewing Officer retired on superannuation and therefore his remarks could not be obtained.*

Assessment of Screening Committee:

The Committee noted that Shri N. Prasad, Food Inspector in his resume stated that he has not been assigned / clarified his duties in day to day functioning of Food Inspector. He also stated that he has written to DGHS in this regard but not assigned / clarified. The Committee felt that while Shri Prasad had every right to pursue his grievance with the appropriate authorities, but at the same time as a Govt. Servant he was supposed to perform whatever official duties were assigned to him by his senior officers. The Committee, therefore, treated this ACR also not upto required standard/ upto mark.

1996-1997

Sh.Prasad has been graded as "Very Good". The Committee agreed with the grading given.

-sd-

**(K.K.
MITTAL)
DIRECTOR
ADMN (HQ)
MEMBER**

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-sd-

**(KARNAIL
SINGH)
DIRECTOR
ADMN. (KS)
MEMBER**

-sd-

**(DR.D.
CHATTOPADHYA)
ASSTT. DIRECTOR
GEN. (PFA)
MEMBER**

15. On the basis of the material produced before this Court, having perused the same, this Court is unable to agree with the contentions of the Petitioner that O.M. denying the Petitioner second financial upgradation under the ACP Scheme is not based on concrete material. The aforesaid documents clearly reveal the composition of the screening committee as well as the specific years for which the ACRs of the Petitioner was looked at before the Screening Committee arrived at its assessment. The gradings of each of the years is also provided in the assessment of the Screening Committee. In the considered opinion of this Court, the Screening Committee has certainly considered the

case of the Petitioner on merits, and the Petitioner after evaluation of his service records was not found eligible for grant of II ACP after completion of 24 years of service. It is trite that the grant of ACP is not based upon completion of 24 years of service alone. The service record of an officer is also considered while evaluating his case and therefore, the question of interference by this Court in respect of evaluation alone by the Screening Committee does not arise.

16. In view of the aforesaid, this Court does not find any reason to interfere with the order passed by the CAT. Accordingly, the present writ petition is dismissed, along with pending application(s), if any.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

OCTOBER 31, 2022