

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.24614 of 2016

Date of decision 15.02.2018.

Satya Pal Arora versus Central Administrative Tribunal and ors.

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER.
HON'BLE MR. JUSTICE RAJIR SEHRAWAT.**

**Present : Mr. Manoj Bajaj, Advocate and
Ms. Neha Sharma, Advocate for the petitioner.
Ms. Alka Chatrath, Advocate for UPSC.
MS. Aarti Goyal, Advocate for
Mr. P.C.Goyal, Advocate for respondent No.2.
Mr. Samarth Sagagr, Addl. AG, Haryana.**

RAJBIR SEHRAWAT, J.

The present petition has been filed by the petitioner challenging the order dated 27-10-2016 passed by the Central Administrative Tribunal, Chandigarh whereby the Original Application filed by the petitioner was dismissed and his prayer for re-consideration of his suitability for the Select List for promotion to the post of IAS was rejected.

Stated briefly the facts of this case are that the petitioner had filed the Original Application (OA) before the Central Administrative Tribunal, Chandigarh claiming that he had joined the State Civil Service in the year 1994.

The Government of India, the cadre controlling authority of the IAS cadre under the Indian Administrative Service (Appointment by Promotion) Regulations 1955, had determined seven vacancies of IAS for Haryana Cadre for the year 2011, for filling up by way of promotion from the State Civil Service. As per the Regulations the Select List for promotion to IAS is required to be prepared annually. However, no select list was prepared for the year 2011 until the year 2015. In the meantime the petitioner had retired from the State Civil Service on 30-06-2015. Ultimately the process for filling-up the promotion quota vacancies in IAS Cadre for the year 2011 for the State of Haryana was initiated and as per the Regulations; candidates three times of the vacancy to be filled up were shortlisted for consideration for promotion. The name of the petitioner was at serial No. 10 in the candidates shortlisted for consideration as per their seniority. The meeting of the selection committee was held on 29- 10-2015. The Selection Committee did consider the case of the petitioner. However, the name of the petitioner was not recommended to be included in the select list. It was further claim of the petitioner that since the date of joining the State Civil Service in the years 1994 all his Annual Confidential Reports (ACRs) are of the grade of 'Outstanding'. The selection committee has wrongly downgraded the assessment and categorization of the petitioner from 'Outstanding' to 'Very Good'. As per the petitioner; this downgrading was arbitrary and this was resorted to only to ensure

that the other candidates who were less meritorious than the petitioner as per their ACRs / Service Record get selected. Still further grievance of the petitioner was that one of the candidates included in the zone of consideration had already expired before the meeting of the selection committee. Therefore his name could not have been included in the list of candidates to be considered. Against the inclusion of the name of such expired person in the zone of consideration the petitioner had made representation. This representation filed by the petitioner was rejected by the respondent Union Public Service Commission vide order dated 16-12-2015 on the strength of earlier clarification issued by the Government of India vide letter dated 09-10-2015. Hence in the OA filed before the Central Administrative Tribunal the petitioner had challenged the action of the selection committee, the order of dismissal of his representation dated 16-12-2015, letter dated 09-10-2015 and still another communication dated 09-02-2016. The petitioner had further prayed for a direction to the respondents to consider the case of the petitioner by constituting another selection committee; excluding the members who earlier considered the claim of the petitioner; and to assess his suitability afresh as per his service record, for including his name in the select list and to offer him the appointment to the IAS cadre against the vacancies of the year 2011 as per his position with effect from the due date; with all the consequential benefits; including and allowing him to continue in service up-to

the age of superannuation, which is 60 years.

On being put to notice the respondent No.2, Union Public Service Commission (UPSC) had filed separate reply. The crux of the reply filed by the respondent UPSC was that the averment of the petitioner regarding the seven vacancies being determined by the Government of India for the year 2011 for IAS cadre of Haryana was not denied. It was also not denied that the name of the petitioner was included at serial No. 10 in the zone of consideration and that the meeting of the selection committee was held on 29-10-2015. However it was stated in the reply by the UPSC that despite finalization; the select list for the year 2011 for the IAS Cadre of Haryana could not be made public due to restraint order passed by the Punjab and Haryana High Court in LPA No. 972 of 2015. Therefore, the list for the year 2011 was not notified by the UPSC at that time. Regarding the merits of the petitioner only this much was said in the reply filed by the UPSC that the selection committee is not guided merely by the overall grading given in the ACRs of the candidates but it is required to make overall categorization of the candidate by their own assessment on the basis of the all the entries in the ACRs. Beside this in the reply reliance was placed upon several judgments of the Hon'ble Supreme Court to contend that the assessment made by the selection committee is not to be interfered by the Tribunal or the Court and further that the Tribunal or the Court cannot act as an appellate authority over the

assessment made by the selection committee. It was further claimed that the assessment made by the selection committee is sacrosanct being based on the satisfaction of the selection committee and therefore, neither any reasons are required to be recorded nor can the satisfaction of the selection committee be questioned. However so far as the record and the merit of the petitioner or the assessment thereof by the selection committee or any criteria applied for such assessment is concerned, no comments were offered in the reply filed by the UPSC. So far as the challenge by the petitioner to the letter dated 16-12-2015 and the clarifications dated 09-10-2015 is concerned, in the reply by the UPSC it was averred that this clarification provided for the consideration of the cases of the persons who have expired or retired as on the date of consideration but were available during the relevant period to which the vacancies belong, therefore, the case of the expired person was rightly considered by the selection committee and further that even the petitioner was beneficiary of the same clarification dated 09-10-2015 because he was also considered despite having retired before the meeting of the selection committee. Therefore he was estopped from questioning the validity of this clarification.

The State of Haryana ; under whom the petitioner was in service as State Civil Servant; also filed separate reply before the CAT. The State Government also did not deny the fact regarding the determination of seven

vacancies for the year 2011 and convening of the meeting of the selection committee on 29-10-2015. However, the State Government stated in the reply that name of one of the expired persons, namely, Sh. Mahender Singh Yadav, was also included in zone of consideration although he had expired on 09-09 2012 because the vacancies pertained to the year 2011. For the same reason the name of the petitioner was also included in the zone of consideration although he had also superannuated on 30-06-2015. Beside this the State Government had also claimed in the reply that the selection committee is a high powered committee including the Chairman / nominee of the UPSC and the highest Civil Servant of the State, therefore, any assessment made by them is to be taken at sacrosanct. It was further pleaded that the selection committee is not bound by the grading given in the ACRs of a candidate and it could very well arrive at its own assessment regarding the candidates based on the grading of ACRs and the other entries contained in the ACRs of the candidate. However so far as the service record and the merit of the petitioner or the assessment thereof by the selection committee or any criteria applied for such assessment is concerned, no comments were offered even in the reply filed by the State Government.

The petitioner had filed replication to the reply filed by the UPSC and pleaded that as per the information received under RTI he had come to know that he was not placed in the select list because his grading given in the ACR was

downgraded by the selection committee from 'Outstanding' to 'Very Good'. It was further pleaded that for assessment the selection committee has taken into consideration only the ACRs of the candidates. No uniform, defined or reasonable criteria has been disclosed or applied by the selection committee while downgrading the assessment of the petitioner. It was further pleaded that the assessment of the petitioner by the selection committee suffers from arbitrariness.

The Central Administrative Tribunal vide its order dated 27-10-2016 dismissed the OA filed by the petitioner. While dismissing the OA of the petitioner the Tribunal held that it was for the selection committee to assess the relative merit of the petitioner as deemed fit by it. The Tribunal further held that the assessment made by the selection committee cannot even be impugned before the Tribunal. Moreover, the Tribunal held that if the contention of the petitioner that his ACR's cannot be downgraded by the selection committee is accepted than he would get a march over other candidates who are otherwise seniors to him in his cadre. Therefore his OA cannot be allowed.

Aggrieved against the dismissal of his OA by the Tribunal, the petitioner has filed the present Writ Petition before this court. Based on the information received under RTI Act petitioner has given 21 names which were considered by the selection committee to assess the suitability. The same are as given under:-

S.No	Names (S./Shri/Smt)
1.	Hardeep Singh
2.	Ramesh Chander Bidhan
3.	Mahender Singh Yadav (expired on 09.09.2012)
4.	Sumedha Kataria
5.	Bhupinder Singh
6.	Sunita Verma
7.	Sultan Singh Ghoswal
8.	Geeta Bharti
9.	Pankaj Chaudhary
10.	Satya Pal Arora
11.	Bhal Singh Bishnoi
12.	Ram Sarup Verma
13.	Satbir Singh Saini
14.	Vivek Padam Singh
15.	Monica Malik
16.	Jaibir Singh Arya
17.	Surinder Kumar Setia
18.	Maheshwar Sharma
19.	Shiv Parshad
20.	Girish Arora
21.	Mukesh Kumar Ahuja

Further more, the petitioner placed on record the noting file of the Government of Haryana obtained under RTI Act; regarding the selection in question dealt after the meeting of the selection committee. The extract of the noting file portion is produced hereunder:-

“As regards the first issue of downscaling of the Outstanding

rating(s) to “Very Good” by the SCM -headed by Member, UPSC -the rule for the same is clear that only those officer/s are to be rated Outstanding who have at least Four of the ACR's for the five year period as are to be considered provided he/she is graded at least “Good” in the ACR of the remaining year of the five years (Rule/Para 4.4(A) at F/X). The same is further qualified in 4.4.a.(i) to (iv) of the same guidelines (“F/X’). As per the assessment matrix for the 21 officers in the consideration zone/panel for 2011 – only four officers of HCS in this panel had “Outstanding” ACR's for each of the 5 years. Over 5 years they were rated by different officer (s); but; they were consistently rated “Outstanding”. These four are Sh. Bhupinder Singh, Sh.S.P.Arora (the representationist), Shri R.S.Verma and Sh. Maheshwar Sharma. However, the SCM decided to substitute the wisdom of the reporting, reviewing and accepting authorities of 20 work years and rated them “Very Good” Page 7/8 of Minutes of SCM / PUC – iii). The ratings of the other 17 officers in the zone of consideration were assessed as per para 4.4 B & C of the guidelines (“F/X’).

On the second issue raised by PUC-III, it is felt that Sh. M.S.Yadav is covered by the same clarification and may not be considered for recommendations as per the same. This clarification was, apparently, issued in the case of promotions of IFS only recently and it could be that the same was not brought to the notice of the Selection Committee.

In case, this clarification issued on 09.10.2015 is applied in the instant case of SCM -2011, then Sh.S.P.Arora (at Sr. No.10 on page 7) having been rated "Very Good" moves into the recommended list out of the consideration panel at Sr. No.7 i.e. the last officer to be considered for recommendation to the IAS from the panel of 21 officers for 2011 promotion quota.

On balance, it may be prudent to seek legal opinion, if considered necessary, or the State Government may agree for the recommendation of six out of the seven names and may further seek the indulgence of DoPT & UPSC regarding 'A' above."

On the basis of the records received under RTI Act and as placed on record the petitioner has pleaded and claimed that only the ACRs of the candidates were taken into consideration by the selection committee for the purpose of assessment of the suitability of the candidates. Still further, it is averred and claimed that as per the proceedings mentioned by the Government of Haryana in the noting file, the petitioner was one of the top four candidates in merit; if determined as per the guidelines, having 'Outstanding' grading in report for the past four years. Except these four officers the others were having lesser category of grading in ACRs like 'Very Good' or 'Good'. Still further; as per the record; the petitioner also averred that some of the officers were under cloud also because they had faced some disciplinary proceedings also. Still further; it is

claimed that if the plea of the petitioners regarding the dead person not to be included in the zone of consideration had been accepted than he would have been within first seven candidates; which were required to be recommended for appointments by the selection committee.

While filing written statement to the writ petition; the respondents have again not adverted to the facts of the case regarding the records and merit of the petitioner and criteria of evaluation adopted by the selection committee. In the written statement; once again the respondents have repeated the provisions of the regulations and guidelines and have asserted that it is up to the selection committee to assess the merit of the candidate as deemed fit by it and further that the selection committee is not bound or guided only by the grading given in the ACRs. The selection committee can arrive at its own assessment of the candidate on the basis of the entries in the ACR as well. Again it is averred that the court is not supposed to sit in appeal and substitute its own assessment in place of the assessment made by the selection committee. Accordingly the dismissal of the writ petition is prayed for by the respondents.

Since the record obtained by the petitioner under RTI Act and placed on the file of the writ petition, shows that his evaluation had been downgraded from 'Outstanding' as recorded in ACRs to 'Very Good' and that he was one of the top four officers; had the assessment grading been made as per the guidelines

issued by the Government of India and further that had the already expired person not been considered as claimed by the petitioner, then the petitioner would have been one of the seven candidates which were required to be recommended by the selection committee, even as per his downgraded assessment as 'Very Good - and none of these averments had been denied by the respondents in their written statement and no reason was even asserted by the respondents for downgrading the assessment of the petitioner from his ACRs, therefore, this Court had considered it appropriate to call for the record of the selection committee vide its order dated 05-04-2017 and order dated 11-08-2017.

Arguing the case of the petitioner; the Learned counsel for the petitioner has submitted that the assessment of the petitioner as 'Outstanding' as contained in its ACRs has been recorded by different officers at different times and consistently so for a number of years. Therefore, the grading in the ACRs categorically shows the merit of the petitioner to be 'Outstanding'. The counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in **1987 AIR (SC) 593 R. S. Dass versus Union of India and others** to contend that the selection committee does not have any discretion to change the grading as given in the ACRs and to downgrade the same. The counsel further relies upon the same judgment to contend that the Government of India / UPSC is under bounden duty to issue guidelines to lay down objective criteria for assessment of the officers by

the selection committee. The counsel further submits that, in fact, the UPSC has issued the guidelines for assessment of suitability of the officers by the selection committee. It is submitted by him that as per these guidelines the selection committee is required to prepare an assessment matrix of the candidate under consideration by applying the objective criteria uniformly to all the candidates. However, in the present case respondents have not even averred anywhere either before the Tribunal or before this court that any objective criteria was adopted and applied by the selection committee. Therefore the downgrading of assessment of the petitioner by the selection committee is quite arbitrary. It is submitted by him that none of the officers under consideration was claimed to have been downgraded from 'Very Good' to 'Good'. Likewise no officer is claimed to have been upgraded from 'Very Good' to 'Outstanding'. In the process only downgrading from 'Outstanding' to 'Very Good' has been resorted to by the Committee. Had there been any objective criteria applied by the selection committee then the change in grading would not have been restricted to just one category i.e. downgrading from 'Outstanding' to 'Very Good'. Further more, the counsel has submitted that the respondents have wrongly placed an 'Expired' person and a 'Retired' person in the same category for the purpose of consideration. It is his submission that a 'dead' person cannot be available for appointment even if he is selected as per the evaluation of the selection

committee. Therefore there is no logic or rational behind clubbing the 'dead' person with a 'retired' person. A retired person, if not attained the age of superannuation as per the IAS rules; would be very much available for appointment or to receive the benefits of promotional appointment if attained the age of superannuation. Hence a 'dead' person and a 'retired' person cannot be put at par. Therefore the clarification to this effect issued by the UPSC is totally unreasonable. Hence it is submitted that one of the 'dead' person was wrongly included by the selection committee in the zone of consideration. Had that person not been included in the zone of consideration then the petitioner would have been the seventh person to be recommended for appointment by the selection committee. Hence the consideration of a 'dead' person has caused prejudice to the petitioner. In the end the counsel for the petitioner has submitted that the Tribunal has failed to appreciate the merits of the case and has misread the law in so far as it has held that the assessment made by the selection committee cannot even be impugned before the Tribunal or the Court. It is submitted by the learned counsel that the assessment made by the selection committee cannot be out of scope of judicial review, by any means. Hence the legality or rationality of the decision of the selection committee should have been reviewed by the Tribunal in its right earnest. Since the Tribunal has not appreciated this aspect, therefore, this court is required to undertake the judicial review of the assessment made by the

selection committee and its proceedings.

On the other hand the counsel(s) for the respondents have submitted that the selection committee had made its own assessment as per the regulations. This court is not required to sit in appeal over the assessment made by the selection committee. There is no allegation of malafide against the committee. It is further submitted by the learned counsel that the selection committee is not required to record any reasons for downgrading the assessment of the candidate as compared to be grading in his ACRs. The selection committee is manned by the high officials who are required to assess the candidate to their satisfaction. Therefore, there is no scope for misuse of their power by them and hence, there cannot be any judicial review of the assessment made by such a high powered selection committee. The learned counsel have relied upon the judgment of the Hon'ble Supreme Court rendered in **2005 AIR (SC) 2853, UPSC versus K. Rajaiah and others, 2007 AIR (SC) 1199 Union of India and another versus S.K. Goel and others, 2008 (1) S.C.T. 569 M.V. Thimmaiah and ors versus UPSC and ors.** He also relied upon another judgment reported in **2013 AIR (SC) 141 Sajeesh Babu K versus N.K. Santhosh and ors** to support his argument that since there are no allegations of malafides against the experts who constituted the selection committee; there should be no judicial review of the assessment made by the committee as per their satisfaction. Counsel also relied upon some other

similar judgments to the same effect, which need not be multiplied in mention. It is submitted by the counsel that the selection committee can arrive at its own decision regarding the assessment of the candidate and categorize him lower than the overall grading given in the ACR on the basis of other entries recorded in other columns of the ACR of the candidate under consideration. The Tribunal has rightly held so. Hence no interference in the order passed by the Tribunal is called for. Accordingly, the dismissal of the writ petition is prayed.

We have considered the arguments raised by the learned respective counsel(s) for the parties and perused the records. However, before we proceed to appreciate the arguments, it is apposite to have a reference to the relevant Rules, Regulations and the Guidelines issued by the Government of India / UPSC regarding the appointment to IAS Cadre by promotion from the State Civil Services, and also as placed on record of this case. The same are reproduced hereinbelow:-

INDIAN ADMINISTRATIVE SERVICE (RECRUITMENT)

RULES, 1954

Rule 3. Constitution of the Service:-

The Service shall consist of the persons recruited to the Service in accordance with the provisions of these rules.

Rule 4. Method of recruitment of the Service:-

(1) Recruitment to the Service after the commencement of these rules, shall be by the following methods, namely:-

(a) By a competitive examination;

(b) By promotion of a substantive member of a State Civil Service;

(c) by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service.

(2) Subject to the provisions of these rules,

(a) the method or methods of recruitment to be adopted for the purpose of filling up any particular vacancy or vacancies as may be required to be filled during any particular period of recruitment, shall be determined by the Central Government in consultation with the Commission and the State Government concerned;

(b) the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the State Government concerned.

Rule 8. Recruitment by promotion or selection for appointment to State and Joint Cadre :-

(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State

Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service.

(2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State but who holds a gazetted post in a substantive capacity.

(3) (a) Where a vacancy occurs in a State Cadre which is to be filled under the provision of this rule, the vacancy shall be filled by promotion of a member of the State Civil Service or, as the case may be, by selection of any other officer serving in connection with the affairs of that State.

(b) Where a vacancy occurs in a Joint Cadre which is to be filled under the provision of this rule, the vacancy shall, subject to any agreement in this behalf, be filled by promotion of a member of the State Civil Service of any of the States constituting the group or as the case may be, by selection of any other officer serving in connection with the affairs of any such State(s).

INDIAN ADMINISTRATIVE SERVICE (APPOINTMENT BY PROMOTION) REGULATIONS 1955

Regulation 5(4):- The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their Service records.

5(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

Guidelines for Categorization

F.N. 4/3/2005-AIS As on 14-02-2014

UNION PUBLIC SERVICE COMMISSION

All India Services Branch Guidelines/procedures for categorization of State Civil/Police/Forest Service officers and preparation of a list of suitable officers by the Selection Committee for promotion to the Indian Administrative Service/Indian Police Service/Indian Forest Service in terms of Regulation 5(4) and 5(5) of the Promotion Regulations.

Clause 2.3

In accordance with Regulation 5(4) of the Promotion Regulations, the Selection Committee has to classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be on an overall relative assessment of their service

records (i.e. ACRs and the documents kept therein by the competent authority). For making an overall relative assessment, the Committee will not depend solely on the grading recorded by the reporting/reviewing/accepting authority but will make its independent assessment of the service records of the eligible officers as per the procedure indicated below.

A. SPAN/SCOPE OF ASSESSMENT

3.1 The Selection Committee would go through the service records of each of the eligible officers, with special reference to the performance of the officer during the last five years including the vacancy year, and after deliberation will record the assessment of the Committee in the Assessment Sheet comprising the Assessment Matrix [Officer x Year-wise assessment] and the Column for Overall Assessment of the officers.

3.2 As the Selection Committee actually meets in the year following the vacancy year, the ACRs upto the year ending 31st March (where ACRs are written on a financial year-wise basis) or 31st December (where ACRs are written on calendar year-wise basis) of the vacancy year are to be taken into consideration by the Selection Committee.

B. PROCEDURE FOR ASSESSMENT

B.1 General Procedure for filling up the Assessment Matrix

4.1 The Selection Committee will go through the records of the eligible officers and make their assessment after deliberating

on the quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing officer/ Accepting Authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer. The Selection Committee would take into account orders regarding appreciation for the meritorious work done by the concerned officers. Similarly it would also keep in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation, have not been completely expunged.

4.2 The Selection Committee would not be guided merely by the overall grading, if any, that may be recorded in the ACRs but would make its own assessment on the basis of the entries in the ACRs because sometimes the overall grading in an ACR may be inconsistent with the grading under various parameters or attributes. Further, if the Reviewing Authority or the Accepting Authority, as the case may be, has differed from the assessment made by the reporting officer or the Reviewing Authority, as the case may be, the remarks of the latter authority should be taken as the final remarks for the purpose of assessment provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting officer, Reviewing Authority are complementary to each other and does not have the effect of overruling the other, then the remarks should be read together and final assessment made by the Selection Committee

as indicated in para 4.1 . This is also in accordance with the DPC guidelines of DOP&T, as contained in its OM NO. 22011/5/86-Estt.(D) dated 10.04.1989 as amended from time to time.

B.2 Consistency in Assessment Matrix across successive SCMs

4.3 The Selection Committee, before finalizing the assessments in respect of the eligible officers, may compare the individual years' grading with the year-wise grading assigned by the previous Committee. The year-wise grading assigned by the Selection Committee should, as far as possible, be in consonance with the year-wise grading assigned by the previous Committee unless the present Committee comes to the conclusion that there are adequate reasons for variance in the same. If this variation is leading to a change in the overall grading of the officer, specific reasons for the change should be appropriately recorded by the Selection Committee in the assessment sheet.

B.3 Overall Assessment / Categorization of officers

4.4 While finalizing the Overall Assessment of the officers para 3.1 above refers, an officer shall be graded as:

A. "Outstanding", if in the opinion of the Selection Committee, the service records of the officer reflect that he is of outstanding merit possessing exceptional attributes and abilities and these characteristics are reflected in at least four of the ACRs for the last five years as indicated in paras 3.1 and 3.2 above including the ACR for the last year provided he is graded at least "Good" in the ACR of the remaining year. While grading an officer as

“Outstanding”, the following indicative guidelines would be observed.

(i) Whilst the overall grading in the ACRs will have its relevance, however, in order to have a final view, it will be essential to carefully peruse and assess all the individual attributes/ columns in the ACRs like, Work Performance, Targets Achieved, Supervision, Managerial capabilities, personality traits etc. before the Committee decides to grade an officer as ‘Outstanding’.

(ii) Thus, there should be an in-depth analysis of the performance of the officer before he is rated as ‘Outstanding’. There should also be consistency in the grading given by different Committees in different years.

(iii) Considering the fact that such ‘Outstanding’ officers are going to supersede other officers, there is a greater need to ensure that such an officer has met the stringent norms of being graded as ‘Outstanding’. For such purposes, the ACRs of the concerned officer should elaborate his significant achievements or exceptional nature of work in the areas of law and order, disaster management, implementation of developmental schemes etc.

(iv) Postings are not within the competence of an officer for which he ought not to be discriminated. However, the Committee may also like to examine the various positions that such ‘Outstanding’ officers have occupied and the nature of duties performed by him over the years in the process of assessing the officer.

B. “Very Good”, if in the opinion of the Selection Committee, his ACRs reflect that the officer has done highly meritorious work and possesses positive attributes and these characteristics are reflected in at least four of the last five ACRs as indicated in paras 3.1 and 3.2 above provided he is graded at least “Good” in the ACR of the remaining year.

C. “Good” if in the opinion of the Selection Committee, the service records reflect that the officer’s performance is generally good and he is considered fit for promotion and those characteristics are reflected in each of the ACRs for the last five years as indicated in paras 3.1 and 3.2 above.

D. An officer may be categorized as “Unfit” if his reports are lacking any positive merit or whose performance is not generally satisfactory or if there are entries in some of the latest ACRs which adversely reflect on his suitability for promotion or if the ACRs contain orders of penalty which in the opinion of the Selection Committee would render the officer unsuitable for promotion.”

A perusal of the above extracted provisions of the Rules Regulations and the Guidelines; governing the appointment and the assessment for appointment, at the relevant time; makes it clear that every State Civil Servant holding post on substantive basis has got a statutory right to be considered for appointment to the IAS cadre post of the concerned State. Since it is his statutory right; which partakes the character of a fundamental right under Article 14 of the

Constitution of India, therefore he has also got a right to be considered for promotion in a rational, objective and non-arbitrary manner. As per the Rules and Regulations; in this process of assessment there was no component of Interview or Personal Interaction requiring 'subjective satisfaction' of the selectors on the basis of demeanor or knowledge or personal presentation by the candidates before the selection committee at the time of interview / personal interaction. The entire process of assessment is record based only. Further, the prescribed procedure enjoins upon the selection committee to assess the comparative merit of the eligible candidates by evaluating their service record as reflected in their ACRs. While the overall Grading recorded in the ACRs may not be the final Grading / Categorization to be awarded by the selection committee necessarily; yet to deviate from the overall Grading given to the eligible officer in his ACRs by his ACR recording/accepting authority; the selection committee has to refer to the other entries under individual columns recorded in the same ACRs of a candidate. Hence existence of the entries in the individual columns of the ACRs; sufficient to indicate the dilution of the overall Grading recorded in the ACRs; is a *sine qua non* for deviation by the selection committee from the overall Grading recorded in the ACRs of the Officer. Needless to say that; no other record of the officer regarding his performance makes the basis of his assessment by the selection committee. The other factors like the absence of integrity certificate or the

punishments or adverse entries in ACRs are the exclusionary factors for rendering 'Unfit' and not the factor for categorizing a candidate as 'Very Good' by deviating from his overall Grading as recorded in his ACRs. As per the guidelines containing the process and criteria for assessment, though the recording of reasons is not contemplated at the stage of 1st assessment, however, the guidelines do mandate recording of reason when considering a candidate in subsequent assessment years, if the assessment of the candidate differs from the previous year. Hence the process of consideration of the suitability of the candidates requires recording of reasons as well, although it is at subsequent stage. This also shows that as per the prescribed procedure as well the assessment of the candidates has to be objective one on the basis of objective and uniformly applied criteria and in a rational and non-arbitrary manner.

Having heard the counsel(s) for the parties and perusing the record, we are not convinced with the argument of the Id. Counsel for the respondents that once the selection committee has assessed a candidate than the assessment given by the selection committee, under all circumstances, has to be accepted as sacrosanct and the judicial review of the same is excluded. Though; there cannot be any dispute with the propositions of law laid down in the judgments relied upon by the counsel for the respondent, however, the same are distinguishable on the facts of the present case. The submission made by the Ld. counsel for the

respondents that since the committee is manned by high officials of the State and Central Government, and member of the UPSC and the committee are not required to record the reasons for assessing a candidate in a particular manner, therefore, the Tribunal; or for that matter; the Court cannot have a judicial review of the assessment made by the committee, is not found to be worth acceptance. It is true that as per the amended Regulations prevalent at the relevant time the selection committee is not required to record reasons for their assessment at the initial stage. But the Regulations do contemplate recording of reasons for assessment in subsequent years, if the categorization is changed from previous year. Hence the process of assessment is not altogether exempted from the requirement of recording of reasons. However, the requirement of recording reasons for a decision and the requirement of following the fair procedure and the ultimate decision being rational are two different aspects. The requirement of recording the reasons for a decision is governed by the concerned statutory Rules, Regulations or the Instructions / Guidelines governing the matter. If the concerned Rule, Regulation or Instructions requires recording of reasons than the authority taking the decision is required to record the reasons. Otherwise the authority may not be required to record the reasons for the decision arrived at by it. However, if the process and decision are such where the statutory right of a citizen is under consideration than the fairness of the procedure and rationality of the ultimate

decision have to be read as inbuilt in the Rules, Regulations or the Instructions / Guidelines governing the matter . The Hon'ble Supreme Court in case of **1992 AIR SC 1806 National Institute of Mental Health and Neuro-Sciences versus Dr. K. Kalyana Raman** has held as under:-

“As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirement of procedural fairness. Procedural fairness is the main requirement in the administrative action. The ‘fairness’ or the ‘fair procedure’ in the administrative action ought to be observed. The selection committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant considerations”

Similarly the contention of the learned counsel for the respondents that since the selection committee is manned by highly placed officers, therefore, the assessment made by the committee has to be kept outside the scope of judicial review, is also not worth acceptance. In a system governed by rule of law absolute prerogatives are totally alien, particularly, when the statutory right of citizen is under consideration. Under the Indian Constitution highest executive authority is the President of India and one of the widest powers conferred upon the President of India is given under Article 356 of the Constitution of India. However exercise of even this power by the President of India has been held to be subject to judicial review by the Hon'ble Supreme Court of India in case of **S. R. Bommai v. Union**

of India, AIR 1994 SC 1918. Even the ‘satisfaction’ of the President under 356 of the Constitution of India, has been held to be subject to judicial review on the ground that there exists material to support the decision, the material is relevant to the decision and to see that there are no malafides in the decision, although, the sufficiency of the material would not be looked into by the Court. In the perspective of a legal system where even the executive ‘satisfaction’ of the President of the Nation is subjected to Judicial Review then there is no question of ‘satisfaction’ of the selection committee being outside the scope of judicial review merely on the ground that the said committee is manned by high officers. Otherwise also, even the ‘Nipper’ had responded to ‘His Masters’s Voice’; and the selection committee is manned by human beings, who being; mostly the civil servant, are trained and accustomed as well; to work in tandem with the political master of the day, the possibility of their responding to the call of the concerned political masters cannot be ruled out. Hence the need for objectivity and transparency becomes imperative. While dealing with the specific issue of the ‘satisfaction’ of the selection committee for assessment for promotion to the IAS Cadre, the Hon’ble Supreme Court has cautioned that mere fact that high officials are on the committee does not exclude the arbitrariness. The relevant observations of the Hon’ble Supreme Court as contained in the judgment rendered in **R. S. Dass** (Supra) case are as produced hereinbelow:-

“33 It cannot be said now-a-days; if one is aware of the facts and currents of the life; that simply because categorization and judgment of the service record of the officers are in the hands of senior officers is sufficiently safeguard. There has been considerable erosion in the intrinsic sense of fairness and justice in the senior officers; by all concerned. From instances of conduct of many, some of the senior officers and men in high positions, it cannot be said that such erosion is not only unjustified.”

Therefore, the Hon'ble Supreme Court had asked the Government to frame an objective and reasonable criteria for selection. Thereafter only the detailed instructions / guidelines appear to have been issued. Hence, these instructions / guidelines are required to be meticulously applied and seen to be have been so applied.

Another argument by the learned counsel for the respondent that the Court / Tribunal should not sit in appeal and therefore should avoid the judicial review of the assessment made by the selection committee is also liable to be rejected. There is a very thin line; and sometimes even invisible one; between the judicial review of an action and sitting in appeal over an action. The Court can very well test an action qua existence of relevant material in support of an action and qua exclusion of illegality, irrationality, unfairness of procedure and malafides. If despite exclusion of all the above-said factors two views are possible on a particular factual gamut than the court would uphold the view of the action taking authority and would not substitute its own opinion in place of the action

taking authority. This is the only significance of the argument that the court should not sit in appeal.

Hence it is clear that the arguments that there should not be any judicial review of the assessment made by the selection committee; because it is manned by high officers; because the reasons are not required to be recorded by it or because the court cannot sit in appeal over its assessment is an excessive generalization; and if accepted; would lead to total opacity in a process, which otherwise is ordained to be rational and objective and requiring even recording of reasons in certain circumstances. Opacity is nothing but a tool to disguise the arbitrariness. The arbitrariness is a sworn enemy of the fairness and has also been held by the Hon'ble Supreme Court to be an antithesis of equality before law and equal protection of law, guaranteed by Article 14 of the Constitution of India. Hence such an excessive generalization designed to exclude the judicial review does not find favour with this court. Therefore; the finding recorded by the Tribunal that the assessment of the selection committee could not even be impugned before the Tribunal is set aside.

Reverting to the factual aspect of the present case, the petitioner has pleaded that right from the day of joining the State Civil Service all his ACRs have been 'Outstanding'. He has got appreciation letters as well and that there has not been anything against him in his entire service career. The respondents have

not denied these facts either before the Tribunal or before this Court. The respondents have not disclosed any material in the service record of the petitioner which could even remotely suggest that he could have been assessed by the selection committee in a lower grade than what he had earned in his ACRs, which in turn were awarded by different authorities and spread over his entire service tenure. In the pleadings the respondents have only detailed the procedure of assessment and then taken shelter under the opacity by pleading that the selection committee has categorized the petitioner as 'Very Good' only in its wisdom by seeing the record of the petitioner. The respondents have remained steadfast in not disclosing; even before the court, any material or criteria relevant to the categorization of the petitioner by lowering his category from 'Outstanding' as recorded in his ACRs to 'Very Good' as assessed by the selection committee. While the 'sufficiency' of the material may not have been looked into by the court, however, the court cannot countenance even absence of any such relevant material. The learned Tribunal has gone wrong in law in ignoring this material aspect. One of the reasons with the Tribunal to ignore this aspect appears to be; and has been so recorded by the Tribunal as well, is that had the categorization of the petitioner been retained as 'Outstanding' and not lowered to 'Very Good' then he could supersede other candidates; who are otherwise senior to him in his cadre. This is an erroneous approach. Under the applicable Rules and Regulations itself

the entire process of categorization of candidates is meant to find out if there is some more meritorious candidate in the zone of consideration to march over the other seniors. Otherwise the seniority- with no adverse record would have been the pure and simple criteria of promotion. Hence this conclusion arrived at by the Tribunal is also liable to be set aside. We order accordingly.

Since the respondents had neither denied the facts averred by the petitioner regarding his merit nor disclosed any material suggestive of the categorization of the petitioner, therefore this court had called for the record and proceedings of the selection committee. We have carefully perused the record before the selection committee and the proceedings of the selection committee. Without delving much into the record of the proceedings it would be sufficient to note that the selection committee; after mentioning the applicable Rules and regulations; has recorded only the following; in the name of the assessment of the candidates:-

“The Committee examined the records of the officers whose names are included in the Annexure and who fulfilled the conditions of eligibility for promotion to the IAS. The Committee took into consideration the ACRs of these officers upto the year 2010-2011 and on overall relative assessment of their service records the Committee assessed them as indicated against their

names in the Annexures.”

And thereafter, in the categorization sheet; the categorization of the individual officers is written, which mostly is ‘Very Good’ in respect of all the candidates.

The perusal of the record also shows that although it is reflected that the ACRs dossiers of the candidates were called, however there are no ACRs of the candidates on record; nor is it reflected from record as to what was contained in those ACRs dossiers. In fact all the other details regarding candidates are present on file but only ACRs part is not there. Although the Noting File bearing No. S.N. 12(R)/352-380/c at Page 10 in entry No.6 reads as – ACRs of Officers : Received (P 121-132/c), however at page No. 121-132 it is not the ACRs of the candidates. Rather only a tabulated compilation regarding the formalities / procedure for recording of ACRs is present. Even the overall grading of the candidates is not mentioned, much less the individual columns/entries of each ACR of the candidates. Hence the record presented before the court is singularly devoid of any material regarding any candidate to justify his assessment and categorization made by the selection committee.

In view of the above factual perspective the assessment made by the selection committee does not satisfy the test of being an objective and rational

assessment; carried out to consider the statutory right of consideration of the competing candidates. It is as much opaque as it could be and rationality in the assessment is missing. At the cost of repetition, needless to say, in this process of assessment there was no component of Interview or Personal Interaction requiring 'subjective satisfaction' of the selectors on the basis of demeanor or knowledge or personal presentation by the candidates before the selection committee at the time of interview / personal interaction. This was a purely records based process. In the records, as presented before the court, the material suggestive of the categorization made by the committee is absent. The entries in the columns of ACRs of the petitioner that could prompt the selection committee to categorize the petitioner as only 'Very Good' as against his long and consistent grading in the ACRs as 'Outstanding' are totally absent in the record and even not reflected in consideration.

In this situation, ordinarily the court would have directed the respondents to conduct a review of assessment by the selection committee. However in the present case this court finds that even as per the existing categorization and assessment of the petitioner made by the selection committee the grievance of the petitioner would be redressed. So instead of remitting the matter for review selection meeting the court has taken up the matter for conclusion in these proceedings itself.

As is clear from the record there were seven vacancies for the year 2011. As per the assessment made by the selection committee the petitioner is the seventh living person available for appointment on the date of consideration and he is at eighth place in overall assessment. It is also clear from record; and even from the written statements filed by the respondents; that the selection committee had included the names of one such candidate in the zone of consideration for selection who already stood expired when the selection committee meeting was convened. It is not even the positive case of the respondents that had that person been found to be suitable and in merit than he would have been offered the appointment on the post of IAS cadre; on notional basis posthumously. In fact that dead person, namely, Sh. Mahender Singh Yadav was found upto the mark by the selection committee and his name was included in its recommendation list. However, he has not been given appointment even on notional basis by the respondents. Hence the question of validity of clarification dated 09-10-2015 is not necessarily required to be decided in this case. Hence the same is kept open to be considered in some appropriate case. However, fact remains that one vacancy was kept unfilled by the respondents despite the petitioner being available even as per the merit assessed by the selection committee. It does not stand to logic that a dead person is included in consideration only for the sake of consideration and not for appointment and, in the process; one living person is deprived of the benefit

which he earned through his excellent performance throughout his service career. In view of these facts this court had restrained the respondents from filling up the vacancy left vacant in the process of selection for the year 2011. However, then the respondents filed an affidavit to the effect that keeping the vacancy of the year 2011 unfilled may have bearing on the subsequent select list for subsequent years. Therefore presently they be permitted to fill up the one unfilled up vacancy of the year 2011. In case the petitioner succeeds in this petition then a supernumerary post shall be created for his notional appointment. Resultantly the court vacated the interim order.

In view of the above, the present petition is allowed. The impugned order passed by the Tribunal is set aside. The respondents are directed to consider the petitioner for appointment to the IAS Haryana cadre vacancy for the year 2011. The benefits flowing from such appointment, including his pension etc are directed to be revised accordingly.

(MAHESH GROVER)

JUDGE

(RAJIR SEHRAWAT)

JUDGE

February 15, 2018

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Whether speaking/reasoned	Yes
Whether reportable	Yes