

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No. 120/2001

New Delhi, dated this the 3rd August 2001.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER(A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

SI Jagmal Singh,
D/376, Crime & Rlys,Applicant.
PHQ, Delhi.
(By Advocate: Shri Arun Bhardwaj)

versus

1. Commissioner of Police,
I.P.Estate,
Police Headquarteres,
New Delhi.
2. Addl Commissioner of Police(Estt.),
Police Headquarters,
I.P.Estate, New Delhi.
3. Deputy Commissioner of Police(Crime & Railways)
PHQ Delhi.
(By Advocate: Mrs. Meera Chhibber) Respondents

ORDER

By Shri Govindan S. Tampi, Member(A).

1. Non-inclusion of the applicant's name in the promotion list for 'F'(Min) in spite of his being fully eligible is a matter of challenge in this OA.

2. Heard Shri Arun Bhardwaj, learned counsel for the applicant and Smt. Meera Chhibber, learned counsel for the respondents and also perused all the relevant documents brought on record.

3. The applicant who joined as a Constable in 1968 rose to the rank of Sub-Inspector (Min). On 23.9.97, his name was included in the list of eligible Sub-Inspector(Min) for promotion, at Sl. No.39. In the subsequent letter of 9.5.2000, his name stood at Sl.No.15. Still in the promotion list for 'F'(Min) issued on 4.8.2000, the applicant was shown

(9)

as not having been recommended while 10 other SI's (Min) had been promoted to the rank of Inspector (Min). In his representation dated 25.8.2000 filed against his non-promotion, the applicant relied upon a judgement of this Tribunal dated 13.12.99 in OA 759/96 holding that the category 'A' stood "Very good", 'B' for "Satisfactory to Good", and 'C' for "Average and below average". Category 'B' was "Good and above". On 5.9.2000, three more persons were promoted following which three more representations were filed by the applicant, on 6.10.2000, 7.11.2000 and 27.11.2000. He was informed on 27.9.2000 that he could not be included in the list for promotion as he did not make the grade. Hence, this application.

4. According to the applicant, he has been denied promotion on illegal grounds and the respondents were acting in violation of the principles of natural justice. The applicant has relied on the decision of the Tribunal in various cases showing that category 'B' meant "Good and above". The applicant had never been conveyed any adverse remarks in his ACR and his performance was always good. Still he lost out for no fault of his at all. According to the applicant, he did not deserve this unfair and discriminatory treatment in view of his better record.

5. Opposing the plea raised by the applicant, the respondents state that the OA cannot be granted, Tribunal cannot assume the appellate role over the DPC proceedings or cannot issue directions to promote any individual. Further the O.A. suffers from the infirmity that necessary necessary parties have not been impleaded. Respondents state that the applicant was considered for promotion for empanelment in the list for 'F' (Min), in DPC meeting met on 1.8.2000 which

---3/---

-3-

considered the ACR, ^{or} the candidate of the previous six years and those with more than 50% 'Good and above' were found fit for promotion. Those who had been awarded penalties in the immediate past, ^{and} those who are in the secret list were kept out while those who had only been censured were also considered for promotion, though their actual promotion was to be deferred by six months. According to the respondents, these promotions have been ordered in terms of Rule 17 (iii) of the Delhi Police (Promotion & Confirmation) Rules, 1980, after due verification of the ^{ACRs}. In terms of the DoPT's instructions, DPCs were not to be guided merely by the overall grading, but they should make ^{their} own assessment on the basis of the various entries in the report. Keeping the above in mind, the DPC had considered in their entirety all the reports including that of the applicant but did not find him 'fit' for promotion. According to the respondents, the applicant has only a right for consideration for promotion not for promotion per se and as his case has been considered along with others in the proper manner, there was, no prejudice caused to the applicant and there was no ground for any interference by the Tribunal, pleads Smt. Chhibbar.

oral submissions

6. During the ^{oral submissions} counsel from both sides relied upon a few judgements by the Tribunal in support of their cases. In the case of Head Constable Randhir Singh in OA 1333/99 disposed on 10.9.99, a co-ordinate Bench of this Tribunal had held that grade 'B' meant "Very good". The said view has been reiterated in Tribunal's order dated 21.9.2000 in OA 2145/98. On the other hand, Smt. Meera Chhibber, learned counsel for the respondents referred to the decision of Supreme Court in UPSC Vs. Hiranay Lal Dev and Others wherein it has been decided that merely because adverse remarks had not been communicated, the Tribunal shall not issue a direction for

-4-

(A)

including the name of the concerned person for promotion. She also referred to the decision of the Tribunal in OA 2219/99 of 25.9.2001 as well as Head Constable (Ex.) Kapoor Chand in OA 716/2000 decided on 9.3.2001 and OA 2657/99 dated 2.1.2001 ^{and} stated that the applicant not having obtained necessary benchmark could not have been proved.

6. We have carefully examined the matter. In this case, the applicant has been denied ^{promotion} to 'F' (Ministerial) on the ground that he has not made the grade in the assessment by the DPC. While he pleads that he was denied his due in spite of his seniority and fine record, the respondents hold that as his performance over the years, as reflected in the ACRs was not flattering he was not picked up for promotion. The respondents have produced for ^{our} perusal the minutes of the DPC along with ACR folder of the applicant.

7. We are keenly aware that it is not for us to sit in appeal over the DPC matters or to direct the DPC as to who should be promoted and who should not be. However our role of judicial review does extend to examination of DPC matters to see whether prescribed procedural formalities have been adhered to and to satisfy ourselves that DPC had not acted malafide or illegally. It is with this end in view that we are examining the matter on hand.

8. Relevant portion of the minutes of the DPC held on 1.8.2000 for promotion to List F (Min.) which is under challenge is as below:

-----5/-

Having regard to the provisions contained in Rule 5 of Delhi Police (Promotion and Confirmation) Rules, 1980, the D.P.C. adopted the following criteria in making the selection:-

- i) The ACRs for the preceding 6 years have been taken into consideration. The officer having more than 50% 'Good or above reports' and without any 'below average or adverse' reports during the six years;
- ii) The service record of the officer during preceding 10 years in that particular rank has been taken into account with particular reference to the gravity and continuity of punishments till date. Recent punishments on counts of corruption and moral turpitude have been given added weight in excluding a person from empanelment.
- iii) Officers who have been awarded any major/minor punishment in the preceding 5 years on charges of corruption, moral turpitude and gross dereliction of duty to protect government property or major punishment within 2 years on charges of administrative lapses, from the date of consideration have not been recommended.
- iv) Officers whose names are borne on Secret List of doubtful integrity have not been considered fit as per S.O. No.265/96.
- v) Officers who have been awarded censures during the last 6 months with no other punishment have been considered for empanelment on promotion list. However, the effect of censure by deferring the promotion of the official for six months from the date of award.
- vi) Results of officers, who are under suspension or facing DE or involved in Criminal Cases have been kept in sealed covers."

After indicating the names of Sub Inspector (Ministerial) who have been approved by the DPC for admission to promotion list 'F' (Ministerial), the following remarks are also indicated in the Minutes:-

"The following Sub-Inspectors (Ministerial) have not been found 'Fit' for empanelment to promotion list 'F' (Ministerial due to the reasons indicated against each:-

- | | |
|------------------------------|--|
| 1. Sajjan Kumar
No.D-366 | Name exists on Secret List of doubtful integrity. |
| 2. Jagpal Singh,
No.D-367 | Does not have at least 4 Good or above ACRs out of six." |

13

9. On perusal of the DPC's minutes as well as the ACR folder of the applicant, we observe that for the period of six years relevant to the selection - 1993-94 to 1998-99 - the DPC, had graded him as 'Average' thrice and 'Good' thrice, following which he has not been empanelled for promotion as he did not have the gradation of 'Good and above' for more than 50% of the period (not at least four out of six). Coming to the ACRs for the relevant period we note as below:

Year	general assessment	overall Grading in ACR.	Grading by DPC.
1993-94	Satisfactory/Average	'B'	Average
1994-95	Average	'B'	Average
1995-96	Good	'B'	Good
1996-97	Very Good	'A'	
	Very Good	'B'	Good
1997-98	Average *	'B'	Average #
	*There is also an adverse entry for the period.		
1998-99	Good	'B'	Good
	Good*	'A'	Average

* Remarks lacks command in the ACR is not adverse entry, according to the Reviewing officer.

Though contains some adverse remarks the report was graded as 'B' and remarks not communicated. Hence DPC treats this as average report. (above are remarks by the DPC).

It is in the above scenario, the applicant's case for promotion has been ^{shut} out. The plea by the respondents is that the DPC did not go by the overall grading given by the Reporting/Reviewing Officers but have made independent assessment after going through individual entries. We are not

---7/---

14

→ calling in question the right of the DPC to arrive at its own criterion for assessing the ACRs and they also are supported by the findings of the Hon'ble Apex Court in UPSC Vs Hiranyalal Dev & Others (AIR 1988 SCC-1069) as the powers of Selection are vested in the DPC but in this case DPC had changed the grading given in the ACR and that too to the disadvantage of the individual concerned on the ground that the adverse entry was not communicated. This inference by the DPC is, to say the least, strange. In this case, notwithstanding the adverse entry in the report for 1997-98, the reporting officer has found the officer fit for promotion in turn, a remark not disputed by the Reviewing Officer. The adverse entry was not communicated and in terms of the decision of the Hon'ble Supreme Court in U.P. Jal Nigam Vs S.C. Atre and another, an uncommunicated adverse remark in the ACR would have to be treated as if did not exist. Still the DPC had chosen to downgrade the gradation given in the ACR, to 'Average' and thus arrived at the finding that keeping the above also in mind, the applicant did not have 4 'Good' reports and did not empanel him for promotion. Interestingly, it is the only case in the entire proceedings that the categorisation given by the Reporting/Reviewing Officers has been revised downwards by the DPC and that too for wrong reasons. This was incorrect and this act of the DPC had vitiated the proceedings and the assessment given by the DPC was therefore malafide, illegal and against the guide-lines. The same has therefore to be quashed and set aside.

10. Besides both the applicants and the respondents argued at length as to what each categorisation in ACRs meant for DPC to appreciate and assess.. According to the applicants in view of the decision of this Tribunal dated 10.9.99, in OA 1333/1999 filed by HC Randhir Singh, grading 'B' meant "Very Good" .. This was also reiterated in the order

dated 29.2.2000, while disposing the O.A. No. 2145/98, by another Bench of the Tribunal in which one of us (Govindan S. Tampi) was also the party. On the other hand the respondents felt that this gradation was not correct and it has to be determined in the circumstances of each case. They also referred to decisions of some other co-ordinate Benches of the Tribunal, which according to them hold a different view . However, we observe that the decision of the Tribunal dated 10.9.99 in Randhir Singh's case has also been upheld by the Hon'ble High Court of Delhi, while dismissing the C.W.P. No. 4561/2000 filed by the respondents in the O.A. In the circular the findings recorded in Randhir Singh's case has become binding. Relevant portion of the said decision reads as below:

"The guidelines clearly mention that an officer is entitled for promotion if he has at least 3 'good' or above reports and if he has no adverse reports during the last five years. The applicant has been graded for the last five years as 'B' and in view of the Home Department's letter dated 9.7.1996 grade 'B' should be treated as equivalent to very good. In O.A. No. 1657/94 the Principal Bench of the Tribunal vide order dated 6.8.1999 has also held that the gradation 'B' is equivalent to 'very good'. it should be noted that the gradations are given by the competent authority on an overall assessment of the officers efficiency, good conduct and work. The DPC cannot be permitted to ignore the same and to reassess the officers to come to different conclusions. The guidelines, being mandatory, have to be followed by DPC and officers who fulfil the conditions laid down therein are entitled to be admitted for promotion. The contention of the learned counsel for the Respondent is rejected. In the view we have taken, the applicant is entitled to be admitted for promotion."

In view of the decision of the Tribunal duly upheld by the Hon'ble High Court that the overall categorisation 'B' stands for 'Very Good' merits acceptance. It is seen that the applicant has obtained that during the period of six years under reference - 1993-94 to 1998-99 the applicant has achieved overall grading of 'B' in all the years . However, some have been reckoned as 'Good' by the DPC and others as

(76)

"Average". There is patent inconsistency in this assessment, especially in the light of the High Courts' decision holding that 'B' meant 'Very Good'. In view of the above, we feel that few other judgements of the Tribunal referred to by the Tribunal are distinguishable.

13. In the above view of the matter, the application succeeds and is accordingly allowed. Respondents are directed to consider the case of the applicant by holding a review D.P.C., with uniform standards and treating the uncommunicated adverse entry recorded in the ACR for 1997-98 as not existing and also keeping in view the finding of this Tribunal dated 10.9.99 in O.A. No. 1333/99 filed by Randhir Singh, upheld by the High Court that grade 'B' in ACR meant "Very Good" and if found 'fit' promote him to 'F' (Ministerial) with all consequential benefits, including arrears of pay and allowances, from the date on which his immediate junior has been so promoted. While doing so the respondents shall also put on notice those concerned if any, who are likely to be affected adversely in the event of the applicant's regaining his position. This exercise shall be completed within three months from the date of receipt of the copy of this order.

No costs.

S. Raju
(Shanker Raju)
Member (J)

Govindan S. Tampi
Member (A)

/kd/

