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Central Administrative Tribunal, Principal Bench

Original Application No. 1924 of 2001
M.A. No. 2868/2001

New Delhi, this the 9th day of January, 2002

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. M.P. Singh, Member (A)

Shri Rajbir Singh Deswal, IPS
The Assistant Director,
Bureau of Police Research & Development
Ministry of Home Affairs,
Block No.11, CGO Complex, Lodhi Road,
New Delhi-3

....Applicant

(By Advocate: Shri Naresh Kaushik)

Versus

1. Union of India
through its Secretary,
Ministry of Home Affairs,
New Delhi

2. Govt. of Haryana
through its Secretary,
Home Department,
Haryana Civil Secretariat
Chandigarh

3. Director General of Police
State of Haryana
Haryana Police Headquarter
Panchkula, Haryana

....Respondents

(By Advocate: None)

O R D E R (ORAL)

By Hon'ble Mr. M.P. Singh, M(A)

The applicant is an IPS officer of Haryana cadre from the year 1991. He was appointed to the IPS by way of promotion under Rule 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955. He was served with a statement of imputations dated 23.1.98 under Rule 10 of All India Services (Discipline & Appeal) Rules, 1969 for imposition of minor penalty. The applicant submitted his interim reply. After submitting the reply, he believed that the statement of imputations was not pursued and no further steps were taken on

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consideration of a convincing reply of the applicant. The proceedings thus appeared to have been dropped as no further steps as provided for continuation of proceedings were pending under the disciplinary rules. The applicant had been promoted to the IPS from the State Police Service and also granted the selection grade after the alleged incident on which the statement of imputations dated 23.1.98 was based. Thereafter the applicant was appointed as Assistant Director in the Bureau of Police Research & Development (in short BPR&D), Ministry of Home Affairs, on deputation in August, 2000. It is stated by the applicant that his appointment on deputation is on merit-cum-selection basis and could not have come through if any tangible disciplinary proceeding against him, had been pending on the said date. Moreover, the Government of Haryana would not have relieved him to join on deputation if any adverse proceedings were pending against him. According to the applicant, some inimical elements in the establishment of the Govt. of Haryana raked up with the sole intention of harassing the applicant illegally. Such elements interfered in the grant of Junior Administrative Grade (in short 'JAG') to the applicant and raked up another similar charge-sheet on the basis of incident of the year 1996. He has been served with another memo dated 20.12.96 containing certain allegations against him. He submitted his reply to the imputation of charges. However after a lapse of five years, a charge-sheet has been served on him on 9.11.2000 which is illegal and not sustainable in the eyes of law as laid down by the Hon'ble Supreme Court in

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the case of State of Madhya Pradesh vs. Bani Singh. Due to issue of this charge-sheet, the applicant has been deprived of the grant of JAG which he came to know only through communication dated 17.7.2001, intimating him withholding of JAG on the basis of two disciplinary proceedings pending against him.

2. The BPR&D (Ministry of Home Affairs) had recommended the applicant for grant of President Medal for meritorious service. The applicant had rendered commendable jobs which had enhanced police image. He ~~was~~ also besides being a Managing Editor, Indian Police Journal with unflinching sense of duty, has executed all the responsibilities assigned to him with zeal and efficiency. The present department of the applicant has sought a No Objection Certificate (in short 'NOC') from the State of Haryana for grant of President Medal for meritorious service. Govt. of Haryana, respondent no.2 herein, has not granted NOC on the alleged ground of pendency of disciplinary proceedings. Since the NOC for the grant of President Medal has been withheld by the Govt. of Haryana and the applicant's promotion to the JAG has also not been released, he has filed this OA seeking directions to quash the impugned chargesheet/statement of imputations dated August, 1998, November 2000, communication dated 29.6.2001 and 17.7.2001. He has also sought direction to respondents no.2 and 3 to release the JAG to him w.e.f. January 2000 and to issue a NOC for conferment of President Medal for meritorious service.

[Signature]

3. The respondents in their reply have stated that the applicant was issued the statement of imputations of misconduct by the State Government for the imposition of a penalty under Rule 10 of the All India Services (Discipline & Appeal) Rules, 1969. The applicant has submitted a reply to the statement of imputations which was considered by the State Govt. and it was decided that the penalty of stoppage of two increments be imposed upon him. As the imposition of penalty upon an IPS officer required concurrence of the UPSC, so the final decision is yet to be taken. Apart from this, the applicant was also served a charge-sheet vide memo dated 9.11.2000 under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969. It was because of these reasons that the State Govt. vide memo dated 29.6.2001 intimated the Secretary to the Govt. of India regarding withholding of NOC for the award of Police Medal of meritorious service to the applicant. As regards the release of JAG to the applicant, it is stated that the Ministry of Home Affairs, Govt. of India has issued the following guide-lines:

"This grade is non-functional and shall be admissible without any screening to all the officers working in the Senior Time Scale, who have completed nine years service from 1st January of the relevant years except in case where any disciplinary/criminal proceedings are pending against any individual/person."

4. It is further stated by the respondents that while forwarding the name of the applicant for being posted on deputation with the Central Govt., it was due



to inadvertence that the Govt. of India was not informed of the disciplinary proceedings initiated against him. As regards the contention of the applicant that he has been awarded President's Police Medal on 23.3.2001, the respondents have stated that President of India has granted this Medal to all the members of the Security Forces vide Govt. of India notification dated 24.6.98 to commemorate the 50th Anniversary of India Independence. Thus it has nothing to do with the award of Police Medal for Meritorious Service to the applicant.

5. We have heard Shri Naresh Kaushik, learned counsel for the applicant. None appeared on behalf of respondents.

6. During the course of arguments, learned counsel for the applicant submitted that respondents have charged the applicant for an act which was committed by him in the year 1994 and the charge-sheet issued by them after such a long delay is, therefore, not sustainable in the eyes of law. He also submitted that although the charge-sheet issued in the year 1998 was for a minor penalty, the respondents have now proposed to impose a major penalty under Rule 9.3 of All India Services (Discipline & Appeal) Rules, 1969 which under the rules, is not permissible. Shri Kaushik further submitted that despite the act of alleged omission committed by the applicant in the year 1994, he was inducted into IPS in the year 1995. Thereafter he was also granted the Selection Grade in the State Police Service by the State



Govt. and the State Govt. has also given a NOC to Central Govt. while forwarding his name for appointment on Central deputation. In view of this fact, the State Govt. cannot come up with the plea to withhold the promotion of the applicant to the JAG and also withhold the NOC for the award of Police Medal for meritorious service.

7. After perusal of the records, we find that the applicant was inducted into IPS in the year 1995 with anti-dated seniority of 1991. He thus became eligible for the grant of JAG after putting in 9 years' service in IPS w.e.f. 1.1.2000. The confidential memo issued by the Ministry of Home Affairs (MHA) for withholding the promotion to JAG grade, in case any disciplinary or criminal proceedings are pending against a person, was issued on 12.5.2000, i.e., after the applicant became eligible for promotion to the post of JAG. These instructions issued by the MHA cannot be applied retrospectively and, therefore, cannot come in the way of promotion of the applicant.

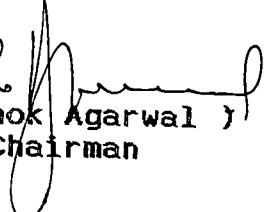
8. As regards the contention of the applicant that the charge-sheet issued in the year 1998 was for a minor penalty and the respondents have now proposed to impose a major penalty under Rule 9.3 of All India Services (Discipline & Appeal) Rules, 1969, no penalty has yet been imposed by the respondents with regard to the charge-sheet issued in 1998. It is only tentatively that they have decided to impose the penalty of stoppage of



two increments and the proposal has been sent to the UPSC for their advice. A final decision in this regard will be taken by the respondents only after the advice of the UPSC is received by them. Therefore, the contention of the applicant that they have decided to impose the major penalty after holding the disciplinary proceedings for minor penalty, is not tenable. The other disciplinary proceedings initiated against the applicant under Rule 8 of All India Services (Discipline & Appeal) Rules, 1969 in November, 2000 are at interlocutory stage and we do not intend to interfere with the same at this stage. The issue of grant of NOC for the grant of Police Medal of meritorious service is directly linked with the disciplinary proceedings initiated against the applicant. So long as the applicant is not clear from the vigilance angle and is also not exonerated in disciplinary proceedings initiated against him, respondents are justified in withholding the NOC for grant of Police Medal for meritorious service. Awards/Medals are conferred by the Govt. and these cannot be sought by way of right.

9. For the reasons recorded above, the OA is partly allowed and the respondents are directed to release the JAG to the applicant from the due date, i.e., 1.1.2000 within a period of three months from the date of receipt of a copy of this order. OA is partly allowed in the aforeslated terms. No order as to costs.


(M.P. Singh)
Member (A)


(Ashok Agarwal)
Chairman

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