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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1930/1988

New Delhi, dated the 8th Feb., 1994

The Hon'ble Mr. N.V. Krishnan, Vice Chairman(A)

The Hon'ble Mr. B.S. Hegde, Member(Judicial)

Shri A.K. Guha,
R/o H.NO. 175, Madan Lal Block,
Asian Games Village, New Delhi

Applicant

(By Advocate Sh. Vijay Kumar Mehta)

Versus

1. Union of India., through
Secretary, Ministry of Home Affairs,
New Delhi.
2. Union Public Service Commission,
through Secretary, UPSC,
Dholpur House, Shahjahan Road,
New Delhi
3. Shri A.J.S. Sawhney at present
Secretary to Governor, Goa, Raj Niwas
Panaji(Goa)

... Respondents

(By Advocate Sh.M.L. Verma, counsel
for the respondents 1 and 2)

None for the respondent No.3

ORDER(ORAL)

(Hon'ble Mr. N.V. Krishnan, Vice Chairman(A)

The applicant is aggrieved by the manner in which his case was considered by the Selection Committee under the Indian Administrative Services (Appointment by promotion) Regulation, 1955 which met on 30.12.1987. It

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is stated that this Committee did not consider his case for two reasons (a) Vigilance clearance in respect of the applicant was not given by the Delhi Administration with whom he was on deputation at that time, ^{and} (b) Annual Confidential Report ^{u been} for the years 1984-85 and 1986-87 had not placed before the Selection Committee and also that the ACR for the period 1.5.85 to 31.8.85 had not been recorded. It is also stated that commendation letters annexure 1 and 11 were also not placed on records.

2. Due to these two reasons the applicant was superseded and respondent No.3, who is junior to him in the DANI Civil Service was selected by the Selection Committee and then appointed to the I.A.S. vide notification on 9.8.1988 (Ann.A.4)

3. In the circumstances, the applicant has prayed for the following reliefs:-

- i) declare that the proceedings of the selection Committee which met on Dec., 30, 1987 to consider and prepare the list of suitable officers of the DANI Civil Service for promotion to the IAS are vitiated by non-consideration of the applicant's name and are arbitrary, illegal, ultra-vires and are contrary to Articles 14 and 16 of the Constitution and the Rules and Regulations governing the same;

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- ii) Declare that the Notification dated 9.8.1988 issued in pursuance of the recommendations of the aforesaid Selection Committee is therefore, illegal, ultra-vires and bad in law;
- iii) direct the respondents to reconsider the case of the applicant after taking into consideration all the relevant service records, vigilance clearance, etc. of the applicant and placing the same before the Selection Committee.

4. Respondents 1 and 2 -Govt for short- and the 3rd respondent have filed their replies.

5. In their reply, Government has stated that the case of the applicant was also considered by the Selection committee- He could not make the grade. It is stated that a select list of 8 persons was to be prepared. Applicant was graded only good. The other persons, some his juniors, were given a better grading and hence placed in the Select List.

6. Government has, made the following submissions, in regard two allegations made by the applicant.

6-7 * That the averments made by the applicant in this para are misconceived and are denied. It is submitted that the officer was on deputation with D.D.A. since the year 1985 and the Vice Chairman, D.D.A. in the certificate recovered on 27.10.1987 mentioned that a vigilance case was pending against the applicant for having failed to exercise adequate supervision over matters pertaining to

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allotment of a commercial plot and that he is proposed to be proceeded against for imposition of minor penalty. This information was brought to the notice of Selection Committee which met on 30th December, 1987. The Selection Committee examined the records of the eligible officers including that of the applicant and on an overall assessment of his records he was assessed as 'Good' and on the basis of this assessment his name could not find a place in the list of suitable officers prepared by the Selection Committee for promotion to I.A.S. Cadre of U.Ts."

6.9 That the ACR on the applicant for the year 1984-85 had been only recorded by reporting and reviewing authority. But it had not been shown to Accepting Authority till 30.12.1987. A No Report Certificate for the period from 1.4.85 to 28.5.85 had been placed before the Selection Committee because as per orders on the subject no ACR could be recorded on the applicant for this period. No ACR had been recorded on the applicant for the period from 29.5.85 to 29.8.85 and the for the year 1986-87, by the time Selection Committee met on 30.12.1987. The appreciation letter at Annexure 1 of the application was also not made available by the officer who recorded it to the Government for placing it on ACR dossier of the applicant though he had conveyed to the applicant that it was being placed in his ACR dossier. The officer recording the appreciation letter at Annexure-II, neither sent the copy of the letter to the Government nor he gave him an assurance that it was being placed on his ACR dossier. Answering respondent craves leave to reiterate that the stray letters of appreciation, which do not give a complete perspective of good and bad points of an officer do not give undue advantage to an officer in the matter of promotion which is governed more by considerations of general and consistently high performance rather than by occasional flashes of good work."

It is contended that the applicant is not entitled to any relief because the selection has been made in accordance with law.

7. Reply of the 3 respondent is more or less similar to what has been stated by the Government. In para 2.4. of his reply, this respondent has stated that the applicant was classified only as 'good' while the 3rd respondent was categorised as 'outstanding' and hence the 3rd respondent had a preferential right to be included in the select list over the applicant.

8. The matter was finally heard today. The third respondent was not present. We, therefore, heard the learned counsel for the applicant and Government.

9. In the light of the reply given by the Government, Learned counsel for the applicant submits that he would be satisfied if a direction is given to the Respondents 1 and 2 to reconsider the case of the applicant by a Review Selection Committee as on 31.12.1987, after ignoring the certificate of the Vice Chairman, DDA which was placed before the Selection Committee by the Govt. and after considering all the ACRs, of the applicant as on 31.12.1987.

10. It is stated by the learned counsel that in similar circumstances the Supreme Court had given direction for reconsideration of the case of an I.P.S. officer in their judgment in *Anarkant V/s State of Bihar* (AIR 1984 SC 531) ^{after holding} the ~~Supreme Court held~~ that the decision of the selection committee was vitiated. ~~is~~ It/therefore directed that his case for promotion to IPS from 1976 onwards should be re-considered. That was a case, whether the petitioner, a Deputy Superintendent of Police, was considered by the Selection Committee for promotion to Indian Police Service. The Committee considered some adverse remarks which were not communicated or the representation against which was not disposed of. It also took into account adverse remarks ordered to be expunged by the State Govt. ~~but~~ not expunged from the C.R. ~~Pol 4~~. It also did not consider CR of later years which contained favourable entries.

11. Learned counsel for Government, however, submitted that this matter does not come under our jurisdiction. He relies on the judgment of the Supreme Court in *UPSC v. Hiranya Lal Dev and Ors* 1988 (3) SLJ (SC) 60 and the decision of the Supreme Court in *H.K. Khanna*

v. Union of India and Ors 1987(2) SLJ SC 153.

12. We have seen the 2 judgments. They are not relevant for our purpose. The ~~Supreme~~ Court judgement only held, that the Tribunal itself cannot take upon itself the function of the ~~Selection Committee~~, we do not intend to do so. The judgment in Khanna case by the Tribunal holds that the applicant was only entitled to be considered for promotion. The complaint here is that he has not been considered ~~favourably~~. *properly*

13. We are of the view, that *u* applicants' case had not been properly considered by the Selection Committee. The Vigilance certificate of the Vice Chairman of the DDA which, admittedly, was placed by the Govt. before the Selection Committee, ought not to have been placed for *u* consideration for two reasons. Firstly, this certificate was issued by the Chairman, DDA who himself was under a cloud as mentioned by the applicant in para 6.6. of the O.A. It is stated therein that CBI held an enquiry against the said Vice Chairman on the allegation that he had issued a No objection Certificate to builders in Bhikhaji Cama Place in contravention of the building bye laws and regulations. In that context, the CBI only *u* ~~recommended~~ *rded* the statement of the applicant. He was not indicated

by the CBI . Therefore, such certificate from the Vice Chairman, DDA, allegedly indicated, ought to have been ignored. The reply to this allegation by Govt. is strangely - that they have no comments because the records are with the CBI. Secondly, it is stated by the applicant that no criminal case had ever been registered against the applicant or any departmental enquiry, was launched.

In the circumstances, we are of the view that

u ^a ~~a~~ perusal of this certificate might have prejudiced the Selection Committee while considering the applicant's case.

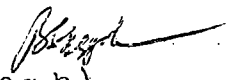
14. In so far as the ACR is concerned, it is seen from para 6.9 of the reply of Govt. that, admittedly, ACR for the year 84-85 was not put up before the Selection Committee. Likewise, the ACR for the year 1986-87 for the ending 31.3.1987 was also not placed before the Selection Committee. Therefore, consideration given by the Selection Committee was ~~not in~~ *incomplete* ~~impression.~~

15. In this view, we are satisfied that the applicant's case was not properly considered.

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16. We, therefore, dispose of this O.A. with a direction to the respondents 1 and 2 to constitute a Review Selection Committee for reconsidering the case of the applicant as on 31.12.1987. The Review DPC shall reconsider the case of the applicant after ignoring the Vigilance certificate issued by the Vice Chairman, DDA in respect of the applicant referred to in para 6.7 of Govt's reply and peruse the complete ACRs of the applicant, as also two commendations at ann.A.1 and Ann.2 and take appropriate decision in accordance with law. If, on the basis of the recommendation of such the Review Selection Committee, the applicant is found entitled to be appointed to the IAS from an earlier date, the first respondent is directed to appoint him accordingly, if necessary ^{by sanctioning} a supernumerary post and grant him all consequential benefits. This shall be done within four months from the date of receipt of this order. A separate copy of this order shall be sent to Respondent No.2.

O.A. is disposed of as above. No costs.


(B.S. Hegde)

Member (J)


(N.V. Krishnan)

Vice Chairman (A)