

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1085/87. 198
T.A. No. 1091/87.

DATE OF DECISION 14.9.1988.

Shri H.S. Rastogi
Shri B.G. Karna Petitioners

Sr. counsel
Ms. Shyamala Pappu/with
Shri K.K. Rai. Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri P.P. Khurana Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE J.D. JAIN, VICE CHAIRMAN.

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

14/9/88
(BIRBAL NATH)
MEMBER

J.D. Jain
(J.D. JAIN)
VICE CHAIRMAN.

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

DATE OF DECISION: 14.9.1988.

REGN. NO. O.A. 1085/87.
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Shri H.S. Rastogi ... Applicant

Shri B.G. Karna ... Applicant

Vs.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicants: Ms. Shyamala Pappu, Sr. Counsel
with Shri K.K. Rai, counsel.

For the respondents: Shri P.P. Khurana, counsel.

JUDGMENT

(delivered by Hon'ble Mr. Birbal Nath, AM).

S/Shri H.S. Rastogi and B.G. Karna, Superintending Engineers, Delhi Administration and C.P.W.D. have per their O.A. No. 1085/87 and O.A. No. 1091/87 filed on 23rd July, 1987 and 31st July, 1987 respectively, challenged the appointment of their juniors to the post of Chief Engineer vide orders dated 12th March, 1987 and 20th March, 1987 issued by the Government of India, Ministry of Urban Development (Annexure 'E' and 'F' to the application of Shri Rastogi and Annexures 'B' and 'C' to the application of Shri Karna).

2. Since the two applicants have impugned the same orders of promotion and raised identical contentions, both applications are disposed of by a common order.

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3. The facts leading to the applications are that the applicant Shri H.S. Rastogi joined the C.P.W.D. as Assistant Executive Engineer on 22nd August, 1962 on the basis of the competitive examination held by the Union Public Service Commission in the year 1961. He earned his promotion as Executive Engineer in 1965 and as Superintending Engineer in 1976. Later, he went on deputation to the New Delhi Municipal Committee for appointment as Chief Engineer (Civil) on deputation basis. His services were later placed at the disposal of the National Bank of Agriculture and Rural Development, Bombay, for appointment to the post of Consulting Engineer.

So far as the second applicant, Shri B.G. Karna is concerned, he got selected to the Civil Engineering Services Class I through the UPSC in 1960. He was appointed as Assistant Executive Engineer in C.P.W.D. in 1962. He got his promotion as Executive Engineer in 1965. He was promoted to the next higher scale of Superintending Engineer in 1973. He also got selection grade of the post of Superintending Engineer in 1986.

4. A meeting of the D.P.C. was held on 4.8.1986 to recommend a panel of officers for officiating promotion as Chief Engineer (Civil) level II on regular basis against 11 existing/anticipated vacancies during the year 1986. However, the DPC framed a larger panel because a few officers were on deputation and might not have been available for appointment immediately. The DPC was presided over by a Member of the UPSC and they assessed the records of 33 officers and recommended the names of S/Shri H.S. Rastogi and B.G. Karna at serial No. 11 and 8 respectively. It is the grievance of the applicant that having been recommended by the D.P.C. which was presided over by a Member of the UPSC, they have been ignored for promotion and their rights under Articles 14 and 16 of the

(P)

Constitution have been denied.

Their contention is that the Appointments Committee of the Cabinet has acted arbitrarily by approving others and ignoring the applicants.

5. The Respondents-Union of India were asked to produce the file on which the promotion cases of the applicants were examined by the A.C.C. However, the Secretary to the Government of India in the Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, filed an affidavit on 26th August, 1988 claiming privilege to the disclosure of the contents of the said file. By a separate order, the Tribunal has rejected the claim of privilege and has perused the contents of the file on which the cases of the applicants were processed by the A.C.C. It is unfortunate that the respondents-Union of India decided to retreat behind the claim of privilege when they had examined the cases of the applicants and others in a proper manner.

6. We have heard the arguments of the learned Counsel for the parties and perused the documents placed before us.

It may be noted at the outset that Ms. Shyamala Pappu, learned Senior Counsel for the applicants wanted to rely on the judgment of the Tribunal in the case of Shri Tejinder Singh Vs. UOI & Ors. (O.A. No. 45/86) decided on 29th June, 1987 by Court No. I of the Principal Bench. However, when it was mentioned that an S.L.P. against this judgment has been filed in the Hon'ble Supreme Court and the operation of the judgment has been stayed, the learned Sr. Counsel for the applicant fairly agreed not to refer to this judgment during the course of the arguments.

7. The principal contention urged by Ms. Shyamala Pappu on behalf of the applicants is that the decision of the A.C.C. was arbitrary and no reasons were recorded for ignoring the claims of the applicants. Before we deal with this

contention, the second contention urged by the learned Sr. counsel may be disposed of first. She dwelt upon ground (L) in the application of Shri H.S. Rastogi and ground (m) in the application of Shri B.G. Karna. These grounds read as under:-

"L. The appointment Committee of the Cabinet further acted arbitrarily by approving the balance 4 names for promotion despite their being a 'stand by' as explained above. As the applicants understand one of the candidates, Shri Gulzar Singh (Respondent No. 3) who got approval of the Appointment Committee had been charge sheeted in connection with a minor penalty and a censure was passed against him sometimes in October, 1976. On the contrary, so far the applicant is concerned, he has always received commendation by the department and no adverse entry has been ever made in his career. Even the other candidate, Shri S.R. Goyal, who has been cleared by Appointment Committee was charge sheeted for major penalty proceedings and a written warning was issued to him some time in September, 1981. The same is obvious from communication dated 18.2.1987 from Establishment Officer, Department of Personnel & A.R. addressed to Ministry of Urban Development consequent to which office order No. 47/1987 dated 20.3.1987 was issued by Ministry of Urban Development. This order has also been impugned as Annexure F."

para.(m) in the application of Shri B.G. Karna makes a similar reading.

Her contention is that whereas the applicants had no adverse entry, a censure was awarded to Shri Gulzar Singh in October, 1976 and a written warning was issued to Shri S.R. Goel in September, 1981. Even by their own averment, a censure of 1976 i.e. 10 years old should not debar promotion of a Government employee if he is otherwise suitable. May be, proceedings were initiated against Shri S.R. Goel but issuance of a written warning is no impediment to promotion since warning is not a statutory punishment. Thus, this challenge is not open to the applicants.

¶. The next principal contention of the learned counsel for the applicants is that the UPSC is comprised of experts and once a DPC is presided over by a Member of the UPSC has made a recommendation, the same is being upon the respondents-Union of India and they cannot be differed with

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by the appointing authority. In this connection, she relied on the office memo. dated 30th December, 1976 which lays down the detailed procedure for making promotions and which provides consultation with the UPSC with regard to promotions on the recommendations of the DPC. The said circular with respect to a situation where difference of opinion arises reads as under:-

"If it is considered necessary by the appointing authority to vary or disagree with the recommendations made by the DPC, the procedure prescribed for overruling the recommendations of UPSC should be followed. The relevant portion of the procedure as set out in the Ministry of Home Affairs O.M. No. 18/42/50-Ests. dated 27.11.1950 is reproduced below:

"The Government of India have decided that where the Union Public Service Commission have been consulted in regard to any appointment(s) the recommendations made by the Commission should not be departed from unless, in the opinion of the Hon'ble Minister concerned, exceptional circumstances exist which in the public interest require such departure. In such a case the reasons for holding this opinion should be communicated to the Commission and the Commission given an opportunity of further justifying their recommendations. On the receipt of the observations of the Commission, their recommendations should be considered further by the Ministry still considers that the recommendations made by the Commission should not be accepted, the case should be referred with a self-contained summary to the Establishment Officer of the Government of India who will place it before the Appointments Committee of the Cabinet consisting of the Hon'ble the Prime Minister, the Hon'ble Minister of Home Affairs and the Hon'ble Minister administratively concerned with the appointment(s). In cases in which the Hon'ble Home Minister or the Hon'ble the Prime Minister happens to be the Minister concerned with the appointment, the Hon'ble Finance Minister will be added to the Committee. The decision reached by the Appointment Committee in all such cases should be communicated to the Commission by the Ministry administratively concerned. Final orders in accordance with the decision will also be issued by that Ministry, copy being endorsed to the Commission."

A perusal of the above said O.M. shows that once a Ministry disagrees with the recommendations of the UPSC, the matter has to be referred back and it will be decided by the A.C.C. It was argued by the learned Sr. Counsel for the applicant that even where the A.C.C. differs, they must refer back the case to the UPSC. In this connection, she relied upon the Supreme Court judgment in the case of Chandra Mohan v. State of Uttar

Pradesh and others,¹ wherein it was held that the power of appointment by the Governor is conditioned by his consultation with the High Court i.e. he will appoint a person only in consultation with the High Court. In the same manner, she relied upon the judgment of the Supreme Court in the case of M.M. Gupta and others Vs. State of Jammu & Kashmir & Ors.² In this case too, the question was appointment of District Judge. Apparently, the consultation with the High Court was indispensable, ^{which} who supervises the work of the Judicial services. In this judgment, it has been held that where the State Government finds it difficult to accept the recommendations of the High Court, it should indicate its views to the High Court and the State Government must have complete and effective consultation with the High Court in the matter. She went on to argue that consultation or deliberation is not complete or effective before the parties make their respective points of view known to the other or others and discuss and examine the relative merits of their views. In this regard, she was relying upon the Supreme Court judgment in the case of

Chandramouleshwar Prasad v. The Patna High Court and others³

This case also relates to the supervision of High Court over the officers of the Judicial Services.

We have to distinguish all the three judgments on the ground that consultation with the High Court is not only a constitutional requirement under Articles 233 and 234 also but/there is an ineluctable reason for the same because the High Court is the only organ which supervises the working of the judiciary ^{1. Service} and the working of the ~~the~~ ^{2. Service} judiciary cannot be known to the Governor or any other organ of the Executive.

1. AIR 1966 SC 1987.

2. 1983(1) SLR 161.

3. AIR 1970 SC 370

So far as the judgment in the case of Chandramouleshwar Prasad Vs. The Patna High Court (supra) is concerned, it refers to making of a proposal by one party and a counter proposal by another party. Evidently, there is no question of a proposal being made by the UPSC and a counter proposal being made by the Union of India in the matter under discussion.

It was further argued by the learned counsel for the applicants that the provisions of Article 233 of the Constitution regarding appointment of District Judges by the Governor of the State in consultation with the High Court is in the same language as with regard to the appointment to civil services in terms of Article 320 Zsub clause (3)Z. It is true that Article 233 clearly stipulates that the Governor of the State shall appoint District Judges in consultation with the High Court. Where the Government has a counter proposal to make, it should be done in accordance with the judgment of the Supreme Court in the case of Chandramouleshwar Vs. The Patna High Court (supra). However, the provisions under Article 320 of the Constitution do not contemplate a situation of a counter proposal and a reference back to the UPSC by the Appointments Committee of the Cabinet does not follow as a constitutional requirement. The provisions of O.M. of December, 1976, quoted above, do not cast this duty of re-consultation with the UPSC by the A.C.C. but only by the Ministry which happens to differ with the recommendations of the UPSC.

9. The learned counsel for the applicant also relied upon the judgment of the Supreme Court in the case of Jatinder Kumar & Ors. Vs. State of Punjab and others¹ wherein it has been held that the recommendations of the UPSC, a body of independent persons of high ability, should not be ignored. Para. 12 of this judgment reads

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as under:-

"12. The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendations of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus..."

From the foregoing, it is clear that it cannot be claimed as of right that the Government must accept the recommendations of the Commission. It has been held ^{The Government} in the aforesaid judgment that it cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character. The learned Sr. Counsel for the applicant argued that there was no imputation of bad conduct or character against the applicants. Therefore, the order of merit made by the UPSC could not be disturbed by the respondents.

10. After bestowing our earnest consideration to the submissions made by the learned counsel for the applicants, it is stated that we are in complete respectful agreement with the principles laid down by the Supreme Court on the issue of consultation with the High Court and the UPSC. Nevertheless, we find that consultation with the High Court and the UPSC are not on the same footing inasmuch as the High Court is not only an independent constitutional body but ~~is~~ also carries out supervisory functions over the subordinate judiciary and their recommendations on the working of the judiciary will be binding upon the Executive. However, this is not the case in respect of the UPSC which certainly comprises experts and the men of known ability but whose recommendations are only of advisory nature and can be differed by the appointing authority for good reasons. Good reasons need not only be bad conduct but also with regard to the assessment of an officer on the basis of his service record.

11. In the instant case, the A.C.C. through its Secretary came to the conclusion that the applicants had gradings as follows:-

"Shri HS Rastogi While in the earlier years he has been graded A or B, there are no report for the period 1.4.84 to 16.5.84 and from 17.5.84 to 12.8.84. He went on deputation to NABARD. The report for the period 13.8.84 to 31.3.85 grades him B or C. The report for 1985-86 grades him C and all but two parameters. His overall grading in my view cannot be more than Good.

Shri B.G. Karna In 1981-82, he has been graded as C under all parameters. Similarly, in 1982-83, he has been graded as C under all parameters. In 1983-84 he has received B or C. It is only in 1985-86, that he has received A under some parameters. In my view the overall grading cannot be more than Good."

We need not mention the name of the Hon'ble Minister who had given his views about the grading.

The proposal was initiated by the Ministry of Urban Development and it went through the Hon'ble Minister of State

Hon'ble Home Minister and was approved by the Hon'ble Prime

Minister and thus the process of consideration by the A.C.C. was completed. In the present case, there are valid reasons available on the file as to how the A.C.C. came to the conclusion as it did in not approving the applicants for promotion to the post of Chief Engineer.

12. Before closing, we may discuss the final argument of the learned Sr. Counsel for the applicants that a comparative study of A.C.Rs should have been made by the A.C.C. It is clear from the file produced before us that the Hon'ble Minister had gone through the C.R. dossiers which amounts to a comparative study by him. So, it cannot be said that the cases of the applicants alone were picked. The Hon'ble Minister has given his own reasons as follows:-

"I have gone through the C.R. dossiers..... The following three officers do not seem to deserve the rating of Very Good. The scale is A to F with A being Outstanding, B Very Good C Good D being Fair, E being not quite adequate and F being unsatisfactory. I would have, therefore, thought that unless an officer consistently got B or above, his overall grading should not be "Very Good"....."

13. We have already reproduced the comments with regard to the gradings awarded to the applicants on the basis of their C.R. dossiers.

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14. In view of the foregoing discussion of facts and law, we find that these applications are without merit and deserve to be rejected. We, therefore, reject these applications, with no order as to costs.

✓ 14/9/88
(BIRBAL NATH)
Member

J. D. JAIN 14.9.88
(J.D. JAIN)
Vice-Chairman.

14.9.1988.