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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.2120/91

New Delhi this the 4th Day of September, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

M.P. Bidlan, H.C.S.,
Sub Divisional Officer (Civil)
Safidion, Haryana.

...Applicant

(By Advocate Sh. P.P. Khurana)

Versus

1. Union of India, through
Secretary to Government of India,
Department of Personnel and
Administrative Reforms,
New Delhi.

2. Union Public Service Commission
through its Secretary,
Dholpur House,
New Delhi.

3. State of Haryana,
through its Chief Secretary,
Chandigarh.

...Respondents

(By Advocate : none)

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

The applicant was a member of the Haryana Civil Service when he filed this application. The Select Committee appointed in terms of the Indian Administrative Service (Appointment and Promotion) Regulations, 1955, did not include his name in the Select List prepared on 24.3.90. The applicant states that the names of 14 Haryana Civil Service officers find place in the Select List as shown in para 4.7 of the OA. Of these, the persons at serial Nos. 7 to 14 are his juniors, as is evident from the Annexure A-1 seniority list.

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2. It is the apprehension of the applicant that the failure to include his name in the select list was due to the communication of certain adverse remarks for the year 1986-87 by the D.O. letter dated 21.6.88 (Annexure A-2). He had made a representation but this was not disposed of and in the meanwhile, the Select Committee met on 24.3.90. However, subsequently, the Government expunged certain portions of the adverse remarks which were recorded in the C.R. for the year 1986-87 but retained the remaining portion. This decision was communicated to him on 9.4.91 (Annexure A-4). Thereafter, the applicant represented to the Chief Secretary, respondent No.3, on 2.7.91 (Annexure A-5) for reconsideration of his case by taking into account the new situation arising from the decision to expunge substantial portions of the adverse remarks.

3. Not getting any response, he has filed this OA.

4. A reply has been filed only on behalf of respondent No.3, i.e., State of Haryana, contesting the claims made in the OA. Neither the Union of India, i.e., Ministry of Personnel nor the Union Public Service Commission, respondents No.1 and 2, respectively has filed the reply.

5. None is present today on behalf of the respondents, though the OA was called twice.

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6. In the circumstances, we have heard the learned counsel for the applicant. The only prayer that the learned counsel pressed for consideration is that, in the above circumstances, the respondents be directed to convene a review Departmental Promotion Committee (DPC) to reconsider the decision taken earlier on 24.3.90 not to include his name in the Select List because, since then, a qualitative change has taken place by the expunction of certain serious adverse remarks.

7. We notice that in paragraph 4.9 of the OA the applicant has averred that for the year 1986-87 though he was rated as 'below average' by the Reporting Authority, i.e., the Deputy Commissioner, Karnal, the Reviewing Authority, i.e., the Divisional Commissioner had categorised the applicant as 'very good'. However, the Financial Commissioner (Revenue) the accepting authority ordered that the adverse remarks be communicated to the applicant. In the reply of the third respondent the averment made that the Reviewing Authority had given him the grading 'very good' has not been specifically denied. This respondent only admits that the Deputy Commissioner, Karnal graded him as 'below average' and that the Financial Commissioner directed the communication of the adverse remarks. The silence of the third respondent on this averment is significant and eloquent. If the Financial Commissioner had not given the grading of 'very good' this averment should also have been denied in the reply. Therefore, we are left with no option except to

draw an adverse inference, as none is present to produce the record, that the Revenue Commissioner had, in fact graded him as 'very good'.

8. The applicant also alleges in para 4.11 of the OA that consequent upon the Annexure A-4 orders on his representation, regarding expunction of the adverse remarks, his record for 1986-87 was categorised as 'very good'.

9. This assertion viz. that the record was treated as 'very good' after the Annexure A-4 order has not been denied in the reply. The Annexure A-4 order too does not state what categorisation was finally given by the Accepting Authority.

10. The respondents contend that the Select Committee has seen the overall record and did not include his name in the Select List. As a substantial portion of the adverse remarks still remains as stated in the Annexure A-4 order, the respondents contend that there is no case for holding a review DPC. We also notice that substantial portions of the adverse remarks has been expunged in the letter dated 9.4.91 (Annexure A-4).

11. We have seen the adverse remarks that were communicated by the Annexure A-2 order. They run into nearly three pages. They are also of a serious nature. If, inspite of these remarks the applicant alleges that the Reviewing Authority had given him a 'very good' grading, it was the duty of the third

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respondent to deny it, if this was not true. For, as pointed out the Reviewing Authority would have given reasons for categorising him as 'very good'.

12. The third respondent is not before us and no record is produced to justify the contention that a review DPC is not necessary. We are also informed by the learned counsel for the applicant that the applicant has seen since been appointed to the Indian Administrative Service.

13. It is not for the third respondent to contend that a review is not necessary. That is the responsibility of the Select Committee only. The position would have been different if the respondents had either denied that the Revenue Commissioner categorised him as 'very good' or that, the Accepting Authority had after passing the order as at Annexure A-4 given him a lower grading that does not justify reference of his case to the Review DPC. In that case we would have been required to consider whether despite the order at Annexure A-4 a Review DPC is necessary. That position does not obtain and, therefore, there is no occasion for us to consider the merits of the claim.

14. We feel that there is a qualitative change after the Annexure A-4 order. Therefore, it would only be proper to direct the respondents to hold a review DPC meeting and to consider again whether in the light of the 1986-87 confidential character report, as it now stands, the applicant was eligible for inclusion in the Select List then prepared on 24.3.90.

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In case the Committee gives a finding in the applicant's favour the applicant would also be entitled to consequential benefits flowing therefrom.

15. We, therefore, dispose of this OA with a direction to the respondents to convene a meeting of the DPC in order to review the decision taken on 24.3.90 by which the applicant's name was excluded from the Select List. In case the Review DPC finds that he is fit enough to be included in that Select List, the Select List shall be modified and the applicant shall be given all necessary consequences flowing from that decision. This decision shall be taken within a period of four months from the date of receipt of this order.

No costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

N.V. Krishnan

4.9.95
(N.V. Krishnan)
Vice-Chairman(A)

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