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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.3055/2004

New Delhi, this the ST ^{JUNE} day of ~~May~~, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.K.Misra, Member (A)

J.K. Sharma
S/o Shri R.P. Sharma
R/o Flat No.1, Type-V
DCP/South Office Complex
P.S. Hauz Khas
New Delhi.

... Applicant

**(By Advocate: Sh. P.P. Khurana, Sr. Counsel with Sh. Neeraj
Walia and Sh. Vivek Singh)**

Versus

Union of India
Through Secretary
Ministry of Home Affairs
North Block
New Delhi.

... Respondent

(By Advocate: Sh. R.N.Singh)

ORDER


By Mr. Justice V.S.Aggarwal:

Applicant (J.K.Sharma) joined the Indian Police Service in the year 1982. By virtue of the present application, he seeks quashing of the minutes of Screening Committee held on 21.8.2003 with direction to hold a review DPC to reconsider the claim of the applicant and to promote him from the date his junior was so promoted.

2. The relevant facts are that the applicant, who joined Indian Police Service in the year 1982, has been earning his due promotions. In January 1999, he was posted back in Delhi Police



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as Additional Commissioner of Police. In January 2000, a pseudonymous complaint was filed alleging amassing of assets by the applicant, which was disproportionate to his known sources of income. Taking advantage of the same, the matter was referred to the Central Bureau of Investigation. The applicant was placed under suspension on 26.5.2000. The said order was revoked on 11.5.2001. The Central Bureau of Investigation had looked into the matter and had submitted the report under Section 173 of the Code of Criminal Procedure before the Special Judge in July, 2004.

3. It is asserted that on 21.8.2003, a Screening Committee meeting was held. Name of the applicant was under consideration but he was ignored for promotion to the post of Joint Commissioner of Police and his junior has been promoted. It is asserted that the said order is not valid.

4. The application is being contested.

5. The basic facts about suspending the applicant and thereafter revoking the suspension are not in dispute. Respondents plead that case of the applicant for his empanelment to the grade of Inspector General of Police was considered. As per the instructions issued by the Government of India, the suitability of the officers to hold the post is required to be adjudged by the Screening Committee. As per the instructions, there is no benchmark for assessing the suitability for promotion and each Committee has to decide its own method and procedure for objective assessment of the suitability of the candidates. The Committee is not guided merely by overall grading. From these



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instructions, the advancement in an officer's career is not required to be regarded as a matter of course but it has to be earned by dint of hard work, good conduct and result oriented performance as reflected in the Confidential Reports. The Screening Committee on the basis of the overall service record of the applicant, as depicted in his Confidential Reports, assessed him 'unfit' for purposes of suitability for empanelment.

6. It is contended that the applicant has not been denied promotion because of the complaint or investigation pending against him. On the date of the meeting of the Screening Committee, the applicant was neither under suspension nor a chargesheet had been issued and this fact has not been considered. The decision as such, therefore, is defended.

7. We have heard the parties' counsel and have seen the relevant record.

8. Before proceeding further, it would be appropriate to notice that the scope for judicial review/interference in matters where high level committee has considered the merits of the candidate, is limited. The Supreme Court in the case of **NUTAN ARVIND (SMT.) v. UNION OF INDIA AND ANOTHER**, (1996) 2 SCC 488 has held:

"6. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and



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call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference."

9. Furthermore, in the absence of provisions to the contrary, the Selection Committee is not obliged to record reasons for its decision to select or not to select a particular person in the matter of selection. The speaking order need not be passed (See: **MAJOR GENERAL I.P.S. DEWAN v. UNION OF INDIA AND OTHERS**, 1995 SCC (L&S) 691).

10. With this backdrop of the principles which are not in dispute, another fact which we have reproduced and which cannot be ignored is that in the counter reply it has been admitted that the pendency of the criminal case against the applicant has not been taken into consideration by the Committee. The short question, therefore, that arises for decision is as to whether in that backdrop, the respondent was justified in ignoring the applicant or not.

11. Both the parties have relied upon the Government of India's instructions of 15.1.1999 which govern the promotion to Senior Scale, Junior Administrative Grade, Selection Grade, Supertime Scale and above Supertime Scales. It provides the general principles regarding mode of selection for promotion and functions of the Screening Committees. The general principles have been enunciated and the Paragraph 1.1 reads as under:

"1.1. It should be ensured while making promotions that suitability of candidates for promotion is considered in an objective and

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impartial manner. For this purpose, Screening Committees (hereafter referred to as Committees) should be formed for different grades whenever an occasion arises for making promotions/confirmations etc. The committees so constituted shall adjudge the suitability of officers for:-

- (a) Promotions of officers in various grades;
- (b) Confirmation, and
- (c) Assessment of the work and conduct of probationers for the purpose of determining the suitability for retention in Service or their discharge from Service or extending their probation."

12. The method of putting up the papers before the Committee reads:

"4.1 The proposals should be completed and submitted to the Committee well in time. No proposal for holding a Committee should be sent until and unless at least 90% of the ACRs (up-to-date and complete) are available. Every effort should be made to keep the ACR dossier up-to-date lest this aspect is advanced as the reason for not holding the Committee meetings in time. The officer referred in para 2 should also be responsible for monitoring the completion of the ACR dossiers.

4.2 The ACR folder should be checked to verify whether the ACRs for individual years are available. If the ACR for a particular year is not available and for valid/justifiable reasons, it cannot be made available, a certificate should be recorded to that effect and placed in the folder.

4.3 The integrity certificate on the lines indicated below should be furnished to the Committees constituted to consider cases for promotion or confirmation:-

"The records of service of the following officers who are to be considered for promotion/confirmation in the grade have been



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carefully scrutinized and it is certified that there is no doubt about their integrity."

If there are names of persons in the list of eligible candidates, whose integrity is suspect or has been held in doubt at one stage or the other, the fact should ----- be recorded by the officer in-charge of the Personnel Department and brought to the notice of the Committee. It should be ensured that the information thus furnished is factually correct and complete in all respects. Cases where incorrect information has been furnished should be investigated and suitable action taken against the person responsible for it."

13. The procedure to be observed by the Committee has also been prescribed and is:

"6.1 Each Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential report and based on strict and rigorous selection process. The misconception about 'Average' performance also requires to be cleared. While 'Average' may not be taken as adverse remark in respect of an officer, it cannot also be regarded as complimentary to the officer as such performance should be regarded as routine and undistinguished. It is only the performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards.

CONFIDENTIAL REPORTS

7.1 The annual Confidential Reports are the basic inputs on the basis of which assessment is to be made by each Committee. The evaluation of ACRs should be fair, just and non-discriminatory. The Committee should consider ACRs for equal number of years in respect of all officers falling within the zone of

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consideration for assessing their suitability for promotion. Where one or more ACRs have not been written for any reasons, the Committee should consider the available ACRs. While making the assessment, the Committee should not be guided merely by the overall grading that may be recorded in the ACRs but should make its own assessment on the basis of the overall entries made in the ACRs. If the Reviewing Authority or the Accepting Authority, as the case may be, has overruled the Reporting Officer or the Reviewing Authority respectively, the remarks of the latter authority should be taken as the final remarks for the purposes of assessment provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of all these authorities are complementary to each other, then the remarks should be read together and the final assessment made on that basis.

7.2 In the case of each officer, an overall grading should be given which will be either 'Fit' or 'Unfit'. There will be no benchmark for assessing suitability of officers for promotions.

7.3 Before making the overall grading, the Committee should take into account whether the officer has been awarded any major or minor penalty or whether any displeasure of any higher authority has been conveyed to him. Similarly the Committee would also take note of the commendations received by the officer during his service career. The Committee would also give due regard to the remarks indicated against the column of integrity.

The list of candidates considered by the Committee and the overall grading thus assigned to each candidate would form the basis for preparation of the panel for promotion."

This clearly shows that Committee can decide its own method and procedure for objective assessment. Promotion is not a matter of course. It has to be earned.



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14. The respondents had made available to us the ACRs of the applicant and also 'note' that was submitted to the Selection Committee. Of course, in the 'note' submitted to the Selection Committee, it has been reported that Central Bureau of Investigation have informed that the matter is at final stage of investigation. But as referred to above, respondents admit that it has not been taken into consideration.

15. The summary of the ACRs prepared would read as under:

1992-93	Very Good
1993-94	Very Good
1994-95	Very Good
1995-96	Very Good
1996-97	Very Good
1997-98	No ACR. He has not worked more than 90 days.
1998-99	No ACR. He has not worked more than 90 days.
1999-2000	Very Good
2000-2001	Under suspension
2001-2002	Very Good
2002-2003	Very Good


16. From the aforesaid, it is clear that ACRs of the applicant are 'Very Good'. There is no adverse entry against the applicant and none has been communicated.

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17. If an overall view is taken, we find that the Committee has gone basically by ACRs. There is nothing on the record to indicate that any other matter weighed in the mind of the Committee. In that view of the matter, we find little ground to come to any other conclusion in ignoring the applicant. We hasten to add that we are not trespassing the arena of the Screening Committee constituted for the purpose. It would be competent to take a decision. Though no reasons are required to be recorded, still the record must indicate what prompted the Screening Committee in ignoring the applicant or declaring him unfit. Herein, the Committee has gone by the ACRs. It prompts us to make this observation. In this backdrop, the impugned order, therefore, cannot be sustained.

18. For these reasons, we allow the present application qua the applicant and quash the impugned orders. It is directed that a Committee may be reconstituted to re-consider the claim of the applicant.


(M.K. Misra)
Member (A)


(V.S. Aggarwal)
Chairman

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