

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.160/92

Date of decision:20.07.1992.

Shri Gursem Singh

...Applicant

Versus

Union of India & Ors.

...Respondents

Coram:-

The Hon'ble Mr. T.S. Oberoi, Judicial Member

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the Applicant

Shri V.S.R. Krishna, Counsel.

For the Respondents

Shri N.S. Mehta, Senior Standing Counsel.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*

2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. Rasgotra)
Member(A)

T.S. Oberoi
(T.S. Oberoi)
Member(J)

(9)

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Shri N.S. Mehta, Senior Standing
Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member(A))

Shri Gursem Singh, working as Superintendent of Police in Central Bureau of Investigation (CBI) has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by his non-selection to the promotional post of D.I.G. in CBI by the Departmental Promotion Committee (DPC). He submits that his record of his service has been blemishless and his services have been appreciated all along by the respondents. He has also not been communicated any adverse entry in his confidential reports. In the year 1991 a DPC was constituted to fill up two posts of Deputy Inspector General of Police in the pay scale of Rs.5100-6150, in the promotion quota. The composition of the DPC was as under:-

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- i) Chairman/Member, UPSCChairman
- ii) Joint Secretary (Vigilance), Department of Personnel & Administrative Reforms ...Member and
- iii) Director, CBI and Inspector General of Police, Special Police Establishment Member

As the applicant fulfilled the eligibility condition viz. 10 years' regular service in the grade of S.P., CBI, he also came up for consideration before the DPC. In fact for the two vacancies of the DIG there were only two candidates. The case of the applicant is that the DPC erred in following the consolidated guidelines dated 10.4.89 issued by the Department of Personnel under OM dated 10.4.89. Paragraph 2(1) of the said OM, relating to the composition of the DPCs provides that Members of the DPC for Group 'A' and Group 'B' posts should be officers who are at least one step above the posts in which promotion/confirmation is to be made and further for the posts in the pay scales of Rs.5100-5700 and Rs.5900-6700 or equivalent, the minimum status of the officers who should be members of the DPC should be Secretary /Additional Secretary to the Government of India. Further, paragraph 6.2.2 stipulates that in case of each officer the DPC should give an over all grading which should be one among (i) outstanding, (ii) very good, (iii) good, (iv) average and (v) unfit. While the overall grading so assigned to each candidate would form the basis for preparation of the panel for promotion by the DPC, it should also determine having regard to the nature and importance of

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duties attached to the promotional post a 'bench mark' and only officers whose over all grading is equal to or better than the 'bench mark' should be included in the panel for promotion to the extent of number of vacancies. For the posts carrying the pay scale of Rs.3700-5000 or above the 'bench mark' prescribed is 'very good'. Further, the officers who are graded as 'outstanding' would rank enbloc senior to those who are graded as 'very good' and placed in the Select List accordingly upto the number of vacancies, maintaining their inter-se seniority. 2. Shri V.S.R. Krishna, learned counsel for the applicant referred us to the Recruitment Rules and submitted that the constitution of the DPC was in accordance with the said Recruitment Rules notified by the Department of Personnel on 29.12.1984 but submitted that the DPC contravened the provisions made in OM of 10.4.1989, as an officer below the rank of Secretary/Additional Secretary viz. Joint Secretary (Vigilance) Department of Personnel and Administrative Reforms was one of the members. As the DPC was not constituted in accordance with the consolidated guidelines of 10.4.1989 and, therefore, it erred in following the procedure detailed in the guidelines of 10.4.89. The learned counsel further contended that having constituted the DPC in accordance with the Recruitment Rules that the correct procedure for the DPC would have been to follow the guidelines which were issued vide OM No.22011/6/75-Estt(D) dated 31.12.1976 and of even number dated 11.7.1977. Had this been done, the applicant would have had a fair chance

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to be considered and selected for promotion as the 'benchmark' for promotion prior to 10.4.1989 was only 'good'. He further submitted that out of the 10 ACRs on the applicant which would have been considered by the DPC the applicant possessed 7 'good' and 3 'very good' reports. The learned counsel, therefore, submitted that the proceedings of the DPC had been vitiated, as it was constituted in accordance with the rules promulgated prior to 10.4.1989 but it chose to adopt the procedure laid down in OM dated 10.4.1989. He further contended that the DPC should have followed the procedure laid down in the guidelines which were issued vide OM dated 31.12.1976 and 11.1.1977.

3. The case of the respondents was put across by Shri N.S. Mehta, Senior Standing Counsel very succinctly. The learned Senior Standing counsel submitted that it is not in dispute that the DPC was constituted in accordance with the Recruitment Rules made under the proviso to Article 309 of the Constitution of India. The Rules, however, do not contain any of the details with regard to the procedure to be followed by the DPCs and various functions. The administrative instructions issued by way of OM dated 10.4.89 are only to fill up the gap and are supplemented and they are not in conflict with the Rules. He, however, concluded that where-ever there is any conflict between the administrative instructions and the Rules, it is well established that the statutory Rules shall prevail. In the present case the constitution of the DPC cannot be faulted,


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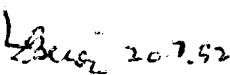
as it is strictly in accordance with the Rules. The issue whether the 'bench mark' should be in accordance with the December, 1976/January, 1977 instructions or April, 1989 guidelines does not come in conflict with the statutory Rules. The administrative instructions of April 10, 1989 are consolidated instructions and they are binding in nature as long as they are not in conflict with the statutory rules. The learned Senior Standing Counsel concluded that the case, therefore, has no merit, as no wrong has been done to the officer. Further, the fact that there were two vacancies and there were only two officers in the zone of consideration does not give any right to either officer in the zone of consideration to have a vested right for promotion ^{to} the higher grade post which is to be filled by selection in accordance with the guidelines which are applicable at the time the DPC takes place.

4. We have heard the learned counsel for both the parties and considered the material on record. We are of the opinion that the DPC was constituted correctly in accordance with the Recruitment Rules. The guidelines of 10.4.1989 where-ever they are in conflict with the rules, it is the rules that will prevail and not the provisions in the guidelines. The rules do not contain any of the details with regard to the procedure to be followed by the DPCs and their various functions. The procedure and various functions have been detailed in the guidelines of 10.4.89. The OM dated 10.4.89 clearly states that "instructions on the constitution and functioning of Departmental Promotion Committees and the procedure to be followed in processing and implementing the recommendations of DPCs were issued in

a consolidated form vide this Department OM No.22011/6/75-Estt.(D) dated 30.12.1976. Instructions have also been issued subsequently clarifying/modifying certain aspects of the procedure. The various instructions have been updated and consolidated in the form of guidelines on Departmental Promotion Committees, a copy of which is forwarded herewith." The guidelines are issued to supplement the Rules and to fill up the gaps in the rules to the extent they are in conflict with the Recruitment Rules, the Rules shall prevail in accordance with the well established law.* The DPC which held on 27.8.91 has necessarily to follow the guidelines of 10.4.89 to the extent they are not in conflict with the statutory rules.

In view of the above discussion of the case, we do not find any merit in the Application which is, accordingly, disallowed and dismissed. No costs.


(I.K. Rasgotra)
Member(A) 2077/92


(T.S. Oberoi)
Member(J)

July 20, 1992.

skk

* Union of India & Others Vs. Somasundaram Viswanath & Ors.
1989 (1) SCC 175.