

(A3)
a
Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 159 of 1986

R.K.Singh	...	Applicant
	Vs.	
State of U.P. and another	...	Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon'ble G.S.Sharma, JM)

The applicant has filed this petition under Section 19 of the Administrative Tribunals XIII of 1985 (hereinafter referred to as the Act) for granting selection grade of the Service.

2. The applicant alleges that on his selection by the Union Public Service Commission, he was appointed in the Indian Administrative Service U.P. Cadre on 7.7.73 in the Junior Time Scale. He was confirmed in the Junior Time Scale of the service on 7.7.1975 on the basis of excellent work and conduct. The applicant was promoted in the Senior Time Scale of the service w.e.f. 24.7.1977 and was confirmed in the Senior Time Scale w.e.f. 16.1.84. After completing 13 years of service the applicant became due for selection grade but despite his good performance he was not promoted to the selection grade and two persons junior to him were granted the selection grade w.e.f. 1.2.1986, which amounted to discrimination and the violation of the provisions of Articles 14 and 16 of the Constitution. It was further alleged that no departmental enquiry was pending and he was also not given any adverse remarks after his confirmation in the senior time

.2.

scale. He was, therefore, wrongly not considered for promotion and his supersession is accordingly arbitrary, malafide, illegal and without jurisdiction. The respondents did not furnish any reasons for his supersession in reply to his letter dated 15.2.1986.

3. The petition has been contested on behalf of the respondents and in the reply filed by the Joint Secretary Appointment Department, U.P. Secretariat, Lucknow it was stated that on his supersession, the applicant neither preferred an appeal nor made a representation to the competent authority for the redressal of his grievance and as such, his petition without exhausting the departmental remedies is not maintainable in view of the provisions of S.20 of the Act. The record of the service of the applicant has not been good. For the year 1975-76, he was given an adverse entry in this confidential roll (for short CR) to the effect that the applicant was required to develop the qualities of maturity of judgment and tactfulness. As he was not making satisfactory progress, the State Govt. decided to watch his work further for a year. He was recommended for his confirmation in the junior time scale only in November 1977. The applicant was again awarded the adverse entries in years 1980-81, 1982-83 and 1984-85. In the year 1980-81, it was recorded in his CR that he was half hearted in the discharge of his duties and did not inspire confidence in the team of his officers. He was also reported to be an ill behaved officer. This entry was communicated to the applicant vide letter dated 18.11.1981. During the year 1982-83, the applicant was posted as Director Youth Welfare and according to the departmental preliminary enquiry it was recorded in his CR

A3
3

11

.3.

that unless the Appointment Department forms an opinion on the inquiry report, it was not possible to certify his integrity. The applicant was, thereafter, served with a charge sheet containing 6 articles of serious charges. The entries for the year 1982-83 were communicated to the applicant vide letter dated 20.2.1984. The Departmental Selection Committee had met in Jan.1986 for granting promotion in the selection grade. The applicant was duly considered by that high power committee for promotion but the same did not find him suitable for promotion on account of the entries in his CR for the years 1975-76, 1980-81 and 1982-83.

4. It was further stated in the reply that in the CR entries of the applicant for the year 1982-83, his work was found of average quality and in the subsequent entry for the year 1984-85, he was not found fit for promotion to the higher grade. For the confirmation of an officer in the senior time scale, his suitability is considered only by way of routine and confirmation is ordinarily made. This criteria, however, does not apply in the case of appointment in selection grade as such promotions are not made in ordinary course and an officer has to be selected for selection grade by the Selection Committee according to the rules. The Departmental Selection Committee considered the applicant for his promotion to the selection grade but he was not found fit for promotion and the allegations made by the applicant to the contrary are incorrect. As the promotion to the selection grade is made on the recommendation of the Selection Committee, there was no occasion to intimate the reasons for his non-selection to the applicant. The

(A3)

(12)

.4.

allegations made by the applicant for his non-promotion to the selection grade are wrong and devoid of any force and his petition deserves to be dismissed.

5. The applicant filed a long rejoinder stating a number of facts which should have been properly alleged in his petition. It was stated by him in his rejoinder that he was not validly considered by the Selection Committee for selection grade. No remedy was available to the applicant for his non-promotion under the service rules and as such, the allegation of the respondents that his petition is barred by S.20 of the Act is incorrect and cannot be raised after the admission of the petition at this stage. The applicant had made a representation against the alleged adverse remark recorded in his CR for the year 1975-76 and the applicant was intimated by the U.P. State that the said remarks had not been treated as adverse by the Government as the remarks were suggestive. The applicant was accordingly recommended for confirmation in the junior time scale in Nov. 1977 and he was confirmed w.e.f. 7.7.1975 the due date for the same. He also disputed the contention of the respondents that a member of Indian Administrative Service (for short IAS) is confirmed in the senior time scale in routine without looking to the service record and reiterated that confirmation is made after judging the suitability and performance of the officer. He further stated that it is false to allege that the CRs of the applicant for the years 1980-81, and 1982-83 were not considered at the time of his confirmation in the senior time scale as his confirmation in this scale was made on 16.1.1984. It was also not correct to say that confirmation in the senior time scale is made in routine

(3) A3
S

.5.

notwithstanding anything contained in the CRs of the officer. For the year 1980-81, two reports were written in the CR of the applicant. The report for the period 7.4.1980 to 31.10.1980 was adverse and was communicated to the applicant but the report for the later period was good. On the representation of the applicant against the adverse remarks made in his CR for 1980-81, the explanation given by the applicant was found to be satisfactory and the matter was dropped as reported vide D.O. letter dated 11.12.1981. The allegations on which the adverse remarks were given to the applicant, were found to be baseless. The applicant has challenged the validity of the adverse remarks given in his CR for 1980-81 by filing Writ Petition No.629 of 1987 in the High Court and the Court had passed an interim order directing the respondents not to consider the said adverse remarks for the promotion and other service matters of the applicant.

6. Regarding the adverse remarks for 1982-83, it was stated that the same stood completely washed off in view of the confirmation of the applicant in the senior time scale. The applicant had filed writ petition No.628 of 1987 in the High Court challenging the validity of the said remarks and even in that case, an interim order was passed by the High Court. The departmental proceedings initiated against the applicant cannot be considered as bar for his promotion and other service matters. Even against the adverse remarks for the year 1984-85, the applicant filed a petition u/s.19 of the Act before this Tribunal and the same is pending. The criteria for promotion to selection grade is seniority subject to rejection of unfit, as stated in Govt. Order dated 30th Nov.1971, copy annexure R-5, and the Selection Committee had wrongly considered the adverse remarks of the applicant which stood washed off.

AM
G

(14)

.6.

7. In the supplementary counter affidavit filed on behalf of the respondents by the same officer, it was stated that the promotion orders for selection grade were issued on the basis of the recommendations of the Selection Committee held in Jan. 1986 according to the rules. In the year 1975-76, the applicant was given a remark that he should not lose his equanimity and objectivity under pressure and as the applicant was not making satisfactory progress, it was decided to watch his work for a further period of one year and that is why his confirmation was recommended to the Government of India in Nov. 1977. The criteria for confirmation in the senior time scale is not so rigorous as promotion to selection grade which is done on merit with due regard to seniority. The note for confirmation of the officers of 1971, 1972 and 1973 batches in the senior scale of IAS was put up on 12.9.1981 and it was mentioned in the said note that the CR of the applicant was good and he was fit for confirmation. Obviously, the adverse entry for the year 1980-81 was then not available in his CR. In this way, the confirmation of the applicant was recommended on the basis of the position as it existed in Sept. 1981. The respondents had filed objections before the High Court against the interim orders obtained by the applicant alleging that the High Court had no jurisdiction in the matter. The representation against the adverse entries for the year 1984-85 was received from the applicant on 24.1.1987 and was under consideration. The adverse entries recorded in the CR of the applicant for years 1975-76, 1980 -81 and 1982-83 have not been washed off and the allegation of the applicant, in this connection, is incorrect.

~~AB~~

8. In his supplementary rejoinder, the applicant reiterated that the remarks recorded in his CR for 1975-76 were not adverse and the remarks of 1975-76, 1980-81 and 1982-83 were wrongly considered by the Selection Committee and despite the recommendation of the Agriculture Production Commissioner (for short APC) for expunging the adverse remarks for 1982-83, the State Government arbitrarily and illegally rejected his representations against the same. The adverse remarks for 1984-85 were awarded to the applicant ignoring the four vital factors - performance, character, conduct and qualities.

9. It is not in dispute in this case that on the appointment of the applicant in the IAS on 7.7.1973, he was confirmed in the junior time scale ^{with effect from} ~~on~~ the due date 7.7.1975 though the respondents had watched his work for a year more after the expiry of the probation period of two years and the recommendation for the confirmation in the junior time scale was made only in 1977. It is also not in dispute that the applicant was granted the senior time scale of the IAS w.e.f. 24.7.1977 and was confirmed in this scale w.e.f. 16.1.1984 with other officers of his batch and there was no supersession of the applicant upto this stage in any manner and according to his length of service, the applicant was appointed as Deputy Secretary, Regional Food Controller, District Magistrate, Managing Director Dairy Federation and Addl. Director of Industries and thereafter as Joint Secretary and Special Secretary in the U.P. State. The posts of Joint Secretary and Spl. Secretary are allowance post. On this basis of this service record of the applicant, it has been seriously contended on his behalf that the 'doctrine of washing off' will apply and all adverse remarks and entries given to the applicant before his confirmation in the senior time

scale on 16.1.1984 stood washed off. His further stand is that after 16.1.1984, there was nothing adverse against him and he ^{had} challenged the validity of the adverse entries awarded to him in 1980-81, 1982-83 and 1984-85 by filing writ petitions and a petition u/s.19 of the Act and the Selection Committee, therefore, committed a serious error in not validly considering his case for promotion to the selection grade and it wrongly took into consideration the adverse reports for the years aforesaid. Before proceeding further, we will like to examine the doctrine of washing off relied upon by the applicant.

10. In Mohammad Habibul Haque Vs. Union of India (1978(1) SLR-637), the Calcutta High Court had held that misconduct prior to the date of promotion of a Govt. servant stands condoned and subsequent to his promotion, proceedings for enhancing the penalty inflicted before promotion cannot be initiated. In Union of India Vs. Mohd. Habibul Haque (1978(1) SLR-748), a Govt. servant was awarded a punishment of reduction in pay for one year and when his memorial against the imposition of punishment was pending, the applicant was promoted to the next higher post. After his promotion, the departmental authorities had issued a show cause notice to him for enhancing his penalty whereupon the Calcutta High Court held that after the promotion of the applicant, the show cause notice was illegal. Again in the Collector of Customs Vs. Rabti Mohan Chatterjee (1976(2)SLR-897), the Calcutta High Court has held that promotion condones the misconduct prior to the date of promotion.

11. In Dr. K.N.Hamimun Nigam Vs. State of U.P. (1984(2) L.C.D.-218) it was held that on crossing the efficiency bar and promotion, the adverse entries prior to the same should not remain a permanent bar for further

.9.

promotion or crossing the efficiency bar and the matter should be considered in the light of subsequent entries as well. In B.S.Minhas Vs. Indian Statistical Institute (1983(4) SCC-582) it was held that an administrative authority is bound to adhere to the procedural standards fixed by it to avoid arbitrariness failing which the action taken by it would be invalid. In that case, the appointment made on the recommendations of the Selection Committee for the selection of a person without publicising the vacancy was held to be invalid. In Dr. Girish Behari Vs. State of U.P. (1983 U.P. Service Cases-34), it was held that the adverse entries preceding promotion, did not constitute valid material for denying subsequent promotion. It was observed in that case that the doctrine of washing off the adverse entries on promotion of an officer is a good doctrine which ensures justice to the public servants. It was the case of an IPS officer and it was held that the doctrine is applicable to crossing of efficiency bar as well as to selection and promotion, ^{and} adverse entries of the petitioner lost their value after his promotion to selection grade and could not constitute a valid material for his supersession.

12. In the State of Punjab Vs. Dewan Chunni Lal (1970 SLR-375), it was held by the Hon'ble Supreme Court that adverse confidential report earlier to crossing of efficiency bar cannot be used in inquiry against the employee. In Brij Mohan Singh Chopra Vs. State of U.P. (1987 (2) SLR-54) it was held that adverse entries awarded to an employee lose their significance on or after his promotion to a higher post and such entries cannot be taken into consideration for forming opinion for pre-maturely retiring a person. It was also held in that case that it is not just and fair to act upon uncommunicated remarks or remarks pending disposal of representation.

(A)
16

(B)

13. In the various authorities cited on behalf of the applicant and considered above, the doctrine of washing off was applied only on the crossing of efficiency bar and on getting promotion to the higher post. These authorities do not provide that the principle should similarly apply when an officer is confirmed in the junior time scale and is promoted and confirmed in the senior time scale of any All India Service. It has not been brought to our notice by placing any material on record that the applicant had crossed the efficiency bar in the senior time scale before he was considered for the grant of selection grade. Thus, in our opinion, the adverse entries awarded to the applicant before his confirmation in the senior time scale cannot be ignored from consideration by applying the principle of washing off for his ^{future} promotion.

14. We will now like to examine the case of the applicant from the point of view whether awarding the selection grade or confirmation in that grade amounts to promotion or the criteria for confirmation in the senior time scale is the same as prescribed for the grant of selection grade. According to Rule 6-A(2) of Indian Administrative Service (Recruitment) Rules, 1954 an officer is to be appointed to a post in the senior time scale of pay if having regard to his length of service and experience the State Govt. is satisfied that he is suitable for appointment to a post in a senior time scale of pay. Thus, the main criteria for senior time scale is length of service and experience and not merit and the State Govt. has to make its satisfaction about the suitability of the officer in

general. In the case of S.Venkatramaiah Vs. Union of India (1984 (LIC (NOC)-88), the Andhra Pradesh High Court had held that admission to senior time scale of pay is not a matter of selection and rules do not make admittance on this principle. Its basis is only the length of service and experience. We are further of the opinion that confirmation on a post is made in routine and for confirmation, only the general suitability has to be considered without any regard to merits. In other words, for the purpose of confirmation, an officer of average or ordinary ability has to be confirmed if there is nothing against his integrity and conduct but for the purpose of selection for higher post or grade, the merit of the officer is the main consideration on his falling in the eligibility limit. On the other hand, according to rule 3(1)(a) of Indian Administrative Service (Pay) Rules, 1954, senior scale can be granted to an IAS officer on his completing 6 years of service or under while under sub-rule(2-A) of rule 3, the appointment to a selection grade in the IAS and to the post carrying pay above the time scale pay has to be made by selection on merit with due regard to seniority. The rules, thus, specifically provide different criteria for granting senior time scale, ^{and} selection grade and it is not correct to say that merely because an officer is confirmed in the senior time scale, he automatically becomes ^{entitled to get the selection} eligible for/grade on ^{without undergoing the process of selection.} completing 13 years of his service. Had it been the intention, there was no need to provide a different mode of selection based on merit under rule 3 (2-A). We are, therefore, unable to accept the contention of the applicant that on his confirmation in the senior time scale

AP
12

20

.12.

of the IAS, he became entitled to selection grade.

15. It was further contended on behalf of the applicant that the disciplinary proceedings were initiated against him only in 1987 when he was served with a charge sheet on 22.4.1987 and the pendency of the disciplinary proceedings against him cannot be a ground for not promoting him to the selection grade. In support of this contention, a number of decisions were cited on behalf of the applicant but as we do not dispute the correctness of this contention, it is not necessary to cite the said decisions here and we agree with the contention of the applicant that merely on account of the charge sheet served on him after his supersession, it cannot be considered a ground for not granting the selection grade to the applicant. *with am. jnrs on 1.1.86. 1*

16. The contention of the respondents, however, is that the applicant's promotion to the selection grade has not been withheld on account of the pendency of the disciplinary proceedings against him but it was withheld because the selection committee did not find him fit and did not make the recommendation for granting selection grade. It has been repeatedly stated by the respondents in their replies that the case of the applicant was duly considered for selection grade by the selection committee in its sittings held in January 1986. The applicant had concealed this fact in his petition but in his rejoinder he stated that he was not validly considered as adverse entries which stood washed off were wrongly taken into consideration by the selection committee. In our opinion, the adverse entries given to the applicant before Jan. 1986 did not stand washed off on his confirmation in the

(A3)
11

senior time scale, as discussed above, and as such, his this contention is not correct.

17. The applicant has further alleged that for expunging his entries of 1980-81, ^{and} 1982-83 he had filed writpetitions no. 628 of 1987 and 629 of 1987 in the Lucknow Bench of the High Court of Judicature at Allahabad in which he was granted interim orders and the operations of the adverse entries was stayed. The said writ petitions were received in this Tribunal for disposal and were registered as T.A.Nos. 711 of 1987 and 712 of 1987. The said writ petitions came before this Bench for disposal along with the present petition and vide our judgment dated 6th May 1988, we held that the said writ petitions were wrongly filed by the applicant in the High Court after the establishment of the Tribunal and they were neither maintainable there nor before this Tribunal. The adverse entries for these years have, thus, not yet been expunged and it is not permissible to the applicant to say that they should not have been considered by the selection committee on any ground.

18. For expunging the adverse entry for the year 1984-85, the applicant had filed Registration O.A.No.821 of 1987 u/s.19 of the Act and vide our order dated 6th May 1988, we have directed the respondents to delete the specified adverse entries. The contention ^{both} of the parties is that the entry recorded in the CR of the applicant for the year 1975-76 is not an adverse entry but is suggestive entry. The record of the proceedings of the selection committee is not before us and we are of the view that the selection committee is constituted by very senior officers and the members of that committee would have considered the report for the year 1975-76 in its right perspective in which it should have been considered. In the case of

(A)
(22)

.14.

Dr. Girish Behari (Supra), the Hon'ble Allahabad High Court had held that the question whether on an overall assessment of the merit of the petitioner, ^{he} was entitled for selection is within the domain of the selection committee and it is not within the jurisdiction of the Court to make recommendation for promotion. The Court, therefore, refrained from expressing any opinion on the question as to whether the petitioner should be selected for promotion to the higher post of Deputy Inspector General of Police as the said function was exclusively assigned to the selection committee constituted under Government of India's order dated Aug.26, 1976.

19. After giving ^{due} most anxious consideration to all the points raised before us, we are of the view that the applicant does not dispute that he was considered for the selection grade by the selection committee but we do not find any force in his contention that he was not validly considered and the entries of 1975-76, 1980-81 and 1982-83 could not be taken into consideration by the committee in making its assessment about the merits of the applicant. The entry of 1984-85 was not considered by the selection committee as the same was not available in his CR upto Jan. 1986 and expunction of that entry will, therefore, not give a fresh cause of action to the applicant for considering his case for selection grade w.e.f.1.2.1986 when some officers junior to the applicant were granted the selection grade. The case of the applicant can, however, be reexamined or reviewed by the selection committee in case the adverse entries for the years 1980-81 and 1982-83 are expunged.

12/15

123

.15.

20. The petition is accordingly dismissed without any order as to costs.

MEMBER (A)

Sharma
9/5/88

MEMBER (J)

Dated: May 9, 1988
kkb.