

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

OA NO.1387/96

Calcutta this the 28th day of November, 2001.

Hon'ble Mr. S. Biswas, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Jud1.)

BRIJENDRA KUMAR SHARMA

-APPLICANT

(By Advocate Shri A. Chakraborty)

-Versus-

Union of India & Others

-Respondents

(By Advocates Shri B. Chatterjee & Mr. A.C. Moitra)

ORDER

Mr. Shanker Raju, Member (J):

The applicant, who has now been promoted and working as Inspector General of Police has assailed the order passed by the respondents on 6.11.96 promoting one Sh. R.K. Majumdar and B. Sarangi as Inspector General of Police. The applicant has further assailed his non-consideration to the post of Inspector General of Police by the DPC met in July, 1996 and has sought promotion as I.G.P. with all consequential benefits from the date his juniors have been accorded the same.

2. Briefly stated the applicant a direct recruit of Indian Police Service of 1970 batch. He was ~~recently~~ promoted as Addl. Supdt. of Police, State Commandant and then lastly promoted as Deputy Inspector of Police (DIG) in July, 1991. He was also placed under suspension on 20.10.92 and the same was revoked on 5.1.93 without instituting any disciplinary proceedings. According to him his work and conduct as well as performance as DIG remained above par and was never communicated any adverse remarks. The applicant was working under the administrative control of one Sh. P.K. Vinayak, IGP in September, 1995 and has highlighted the corruption prevailing at 5th Bn. SAP at Durgapur. He has been alleged baseless allegations through a memo issued by the IGP on 14.5.96 to which he replied clarifying all the allegations made against him and giving his

at the hands of Sh. Vinayak the applicant has moved an application requesting the authorities to get his ACR written by officer senior to the said Sh. P.K. Vinayak. It is also stated that he has not given his self appraisal on this count alone.

3. Meanwhile, the Screening Committee had^u met in July, 1996 to consider the applicant and others for promotion to the post of IGP. One of the ACRs of the applicant was delayed, i.e., pertaining to the period 5.9.95 to 30.9.96 as such the Screening Committee put its finding in a sealed cover and as the applicant was not found fit as per his record his name has not been placed in the select panel. Again on receipt of the ACR which was completed without the self appraisal of the applicant another Selection Committee met on 4.2.97 taking note of the ACR of the applicant and found the applicant unfit for promotion. Ultimately, the applicant found fit for promotion was promoted as IGP w.e.f. 21.6.2000. Hence the present OA.

4. The learned counsel for the applicant, at the outset, stated that the applicant has not at all been considered by the selection Committee in July 1996 and has been superseded by two junior officers belonging to junior batches of 1971 and 1972 respectively and by referring to the order of promotion issued by the respondents on 7.11.96 it is contended that Shri D. Sarangi belonging to 1972 batch has not been shown to be promoted, which, inter alia, connotes that he was not even considered by the Selection Committee but yet promoted. Further, placing reliance on the procedure for selection to the rank of IGP contained in memo dated 4.9.89 it is stated that it is incumbent upon the selection Committee to consider the officers batchwise and the DPC is duty bound to record reasons for non-inclusion of the name of an officer in the panel. It is stated that the performance of the applicant has been above board and he has never been communicated any adverse remarks. The DPC has taken into consideration the motivated and false reports of the then AGP (A.P.) on which no inquiry has been held, which resulted in non-selection and supersession of the applicant. In a nut shell the DPC has taken into consideration the extraneous issues, in eliminating the applicant from the select list and favouring their own officers, vitiating proceedings. It is also stated that in the event any ACR

made his genuine apprehension, keeping in view his consistent excellent performance downgrading him, which would amount to an adverse performance and grading him beyond average the reasons for such a change must be recorded and the applicant should have been informed otherwise this downgrading would not be sustained. The applicant has placed reliance in support of his contention on a decision of the Apex Court in U.P. Jal Nigam v. Prabhat Chandra Jain, 1996 (33) ATC SC 217. Further, it is contended that the selection committee has to give brief reasons for non-inclusion and the reasons cannot be supplemented by additional pleadings. The learned counsel has placed reliance in support of the contention on the decision of the Apex Court in Gurdial Singh v. State of Punjab, AIR 1979 SC 1622 as well as on the decision of the Apex Court in Mohinder Singh v. Chief Election Commissioner, AIR 1978 SC 851. Further placing reliance on a decision of the Apex Court in Union of India v. N.R. Banerjee, 1997 (9) SCC 287 it is stated that it lies within the jurisdiction of the Tribunal in a judicial review to interfere with the findings of the Selection Committee if the same is violative of the rules and is malafide. In this backdrop it is contended that if the records are perused pertaining to the selection committee of 1996 and 1997 are perused the contentions regarding malafide and procedural lapses on the part of the Selection Committee would be apparent. It is further stated that as the applicant has been found fit and promoted as IGP on the basis of the same records in 2000 it is very illogical to conclude that the performance of the applicant has become such which compelled the selection Committee to declare him unfit and not to have included his name in the Select List.

5. On the other hand, the respondents rebutting the contentions of the applicant contended that the applicant has not been superseded at all as the promotion to the post of IGP is based on the criteria of merit-cum-seniority and after evaluation and consideration by the Screening Committee the ACRs of the private respondents have been found much better than the ACRs of the applicant. The applicant has been rightly declared unfit and not included in the Select List. According to them absence of adverse report does not confer a right for promotion in superior post satisfactory re-

to higher post and as even average grading should not be considered adverse for the purpose of communication. It is only the below average grading need be communicated. It is further stated that the promotion is to be considered on evaluation of abilities and competence of a person to be selected for higher post and this is to be left to be decided by the Committee of persons having knowledge of the requirement of a given post. The claim of the applicant for promotion as a matter of right on the basis of seniority cannot be countenanced. It is stated that the applicant may be tolerably good but not yet found fit for the next higher post. The learned counsel of the respondents in support of his contention placed reliance on the decision of the Apex Court in State Bank of India v. Md. Myunddin, AIR 1987 SC 1889. Further placing reliance on a decision of the Apex Court in Durga Devi v. State of H.P. AIR 1997 SC 2618 it is contended that the Tribunal cannot sit as an appellate court and quash selection by itself scrutinising the comparative merits of the candidates. Further referring to various instances it is contended that despite written advice by the Directorate General the performance of the applicant as DIG has not improved and rather slackened and deteriorated and the displeasure of the superiors and further quoting several examples it is contended that the applicant on the basis of his average performance has not made the grade and it is lastly contended that having failed to establish any malafides the claim of the applicant for promotion with retrospective effect cannot be legal and justified. It is, however, stated that as his performance has been improved upon in recent years he has been promoted in 2000. According to the learned counsel promotion cannot be claimed as a matter of right but one has a right for only consideration and having failed to show any illegality in procedure and malafides the OA is liable to be dismissed.

6. We have carefully considered the rival contentions of the parties. The learned counsel for the respondents for our perusal has also furnished the ACR Folders of the relevant years which were considered by the Selection Committee in respect of the applicant and the private respondents as well as the file containing zone of

consideration and minutes of the meeting of the Selection Committee held on 1.7.96 and 4.2.97. As regards the promotion to senior scale in the IPS the Ministry of Home Affairs by their revised guidelines dated 15.1.99 as well as the guidelines dated 4.8.99 laid down the principles regarding the promotion of IPS in the State Cadre. For promotion as IGP the Screening Committee is to be consisted of for the Super Time Scale post of Chief Secretary non-IPS officers of the rank of Chief Secretary working in the State Govt., Director General of Police and as an additional member of not less than of the rank of Additional Secretary to the Govt. of India. The selection should be based on merits with due regard to seniority as provided in sub rule (2-A) of Rule (3) of the IPS (Pay) Rules, 1954. The suitability is to be adjudged by evaluating the character roll as a whole and general assessment of work. The screening committee should be placed with the ACR folder and the integrity certificate. The committee shall be at liberty to decide its own method and procedure for objective assessment of the suitability. Merit is to be recognized and rewarded while average performance may not be taken as adverse but should not be treated as complimentary to the officer. It is only the performance which is above average is to be recognized. The grading in the ACRs should not be the criteria but an overall grading of fit or unfit would be given without any application of bench mark for assessing the suitability of the officer. It is only the overall grading thus assigned to each candidate would be the basis for preparation of panel. The proceedings of any selection committee may be reviewed if the committee has not taken into all the material facts into consideration or if the material facts were not brought to the notice or if there is any grave error in the procedure followed.

Having regard to the above provisions guiding the selection committee we proceed to examine the contention of the applicant to challenge his non-promotion in the year 1996. We find from the record that the ACRs given to the applicant from 1992 to 1997 are either very good or good, except the ACR for the period 5.9.1995 to 31.3.1996

which was not available when the applicant was considered for selection by the selection committee on 1.7.96. The applicant was considered by the screening committee on 1.7.96 but the reasons for not including his name in the panel have been kept in sealed cover. From the perusal of the reasons recorded by the screening committee it transpires that on examination of the ACRs gradings and overall performance the performance of the applicant was found satisfactory. It has been found and pointed out that despite having been graded good in the ACRs the applicant on the basis of the reports on record from immediate superiors has been found to be insubordinate and has not been found fit for promotion. It transpires that the ACR for the period from 5.9.95 to 31.3.96 has not been taken into consideration. The aforesaid ACR has not been completed as the applicant has not filled up the self appraisal i.e. part-I of the ACR and there is a justification for that as one Sh. Vinayak who was IGP was vindictive towards the applicant and who has made his request to assign any other officer to write his ACR apprehending that if it is written by Shri Vinayak he would not be imparted justice. From the perusal of this ACR it appears that despite repeated reminders to the applicant when the ACR has not been filled up by the applicant in part-I the reporting officer Sh. Vinayak graded him below average which has been considered by the reviewing authority and on 28.8.96 the applicant has been graded as average which has been accepted by the accepting authority. Thereafter as contended by the respondents another committee had met on 4.2.97 which had considered the applicant and has also not found him fit and in the record we find that the list of officers considered does not inter alia include the name of the applicant but the same has been interpolated by inserting in the margin after the serial number and before serial number one. There is another list which shows the name being inserted as item number one by changing the serial number to 12. This, in our considered view is not the correct procedure. If the applicant was to be considered afresh on the basis of the completion of the ACR for the period September to March, 1996 his name should have been included in the original list by typing his name at the top of the list having

screening committee and in our considered view the name has been interpolated ~~after the extraction of this committee to produce the record~~. Further from the perusal of the screening committee's findings dated 4.2.97 the ACR pertaining to the period 5.9.95 to 31.3.96 has been taken into consideration and it has been found that the performance of the applicant was not upto the mark in the recent years and he should not be assigned with higher responsibilities and as such he was declared unfit for promotion. It is also pertinent to note that as per the record and the list for zone of consideration for select committee of 4.2.97 while interpolating the name of the applicant neither there is any initial of the competent authority nor any date on the list which goes to throw doubts over its veracity.

7. As regards the contention of the applicant of consideration of his junior viz. Sarangi who has been shown by a notification dated 6.11.96 as officers to be officiated as Inspector General of Police and his non-consideration in the Committee on 1.7.96 is concerned we have perused the minutes of the meeting dated 1.7.96 and find that name of Sh. Sarangi has not figured in the list /panel for promotion to the post of IGP. The name of Sh. Sarangi appears in the select list prepared in pursuance of the minutes of the meeting of the screening committee as on 4.2.97. This clearly shows that the respondents have issued the order promoting Sh. Sarangi and showing him to be posted as IGP on 6.11.96 even without considering him and putting him in the select list on 1.7.96. Unless an officer is considered by the screening committee and placed in the select list he cannot be treated as promoted. The grievance of the applicant that Mr. Sarangi was shown promoted even without considering his case is borne out from the record and is correct.

8. No doubt the select committee while declaring the applicant as unfit has recorded reasons. It does not lie within the jurisdiction of this court to act as an appellate authority over the findings of the selection committee and to assess the comparative merits of the officers but yet as held by the Apex Court in Banerjee's case (supra) on a judicial review it is permissible for the Tribunal to ascertain whether the procedure adopted by the selection committee is free from any arbitrariness or malafide or is not contrary

to the statutory rules or guiding principles for the selection committee. We find force in the contention of the learned counsel for the applicant that the screening committee has not considered the case of the applicant in right perspective in accordance with the guiding principles. As per the Govt. of India's order of 1989 as revised in 1999 the proceedings may be reviewed if the material facts have not been brought to the notice or the same have not been taken into consideration or if there is a grave error in the procedure adopted. The DPC, i.e., the screening committee has taken into consideration the ACRs of the officers upto 31.3.96 and as one of the ACRs of the applicant a part thereof w.e.f. 5.9.95 to 31.3.96 was not complete the same was not taken into consideration and later on another selection committee took into consideration and by interpolating the name of the applicant in the consideration zone rejected his claim. The screening committee has not acted in consonance of their own guidelines pertaining to the ACR as on 1.7.96 the ACRs of the applicant were either Very Good or Good and therein there was nothing to suggest that the performance of the ^{required to be} applicant was / commented upon adversely. We find from the reasons recorded by the screening committee that it has acted upon on being pointed out by a person anonymous that the applicant has developed a highly volatile and irrational behaviour with his subordinates and there were reports on record regarding instances of indiscipline. This is contrary to the remarks in the ACRs and the DPC which was to act strictly in accordance with the overall performance of the officer which could be inferred only from the ACR has traversed beyond the jurisdiction and taking into extraneous material formed its opinion. There is nothing on record, produced by the respondents, to show that the applicant has ever been proceeded against on account of his indiscipline, insubordination or misconduct. The suspension resorted to by the respondents in respect of the applicant has been revoked without instituting any proceeding. In this view of the matter and as regards to the guidelines and procedure to be adopted the remarks by the reviewing authority should be taken as the final remarks and as the overall grading has been found not to have been arrived at

by following the procedure the findings of the screening committee cannot be said to be legally valid or justifiable. Although there is no bench-mark^w for assessing suitability but yet while awarding overall grading we do not find any thing adverse against the applicant which warranted the grading of unfit by the screening committee. The performance of an officer is to be judged on the basis of the documents produced before the screening committee, which inter alia, includes the ACR and if nothing adverse is commented therein the DPC cannot use its own sources to arrive at a finding of adverse performance taking into consideration adverse material, which cannot be countenanced.

9. Another plea of the applicant that his ACR has been downgraded without putting up the same to him also appears to be justified and legal. From the perusal of his ACRs from 1991 to 1995 is concerned the performance of the applicant has always remained very good. From the perusal of the ACR from 5.9.95 to 31.9.96 we find that despite protest of the applicant the same has been written by Mr. Vinayak who has graded him below average which has been remarked by the reviewing authority as average and ultimately accepted by the accepting authority. In U.P. Jal Nigam's case (supra) it has been observed by the Apex Court that downgrading the performance of a Govt. servant to average may not amount to an adverse remark but the reasons should be recorded for such downgrading and he should be informed of the change in the form of advice. We find no material on record to indicate that either the reasons have been recorded or this downgrading has been communicated to the applicant. In this view of the matter taking into consideration this ACR by the screening committee would neither be justifiable nor legally sustainable. We also find that the contention of the learned counsel for the applicant as to the vindictiveness of the reporting officer correct as subsequently the ACR written by different reporting officers graded him very good.

10. In the result and having regard to the reasons recorded above and the discussion made we find that the procedure adopted by the DPC/screening committee on 1.7.96 as well as on 4.2.97 respectively is not in consonance with the guidelines and having transgressed and traversed beyond its jurisdiction the selection committee has acted illegally. We find that in pursuance of the selection committee private respondents No.5 and 6 belonging to junior recruitment batch superseded the applicant and were promoted against the established norms and legal pronouncements ruling the field. However, without affecting their promotional avenues we partly allow this OA and direct the official respondetns to convene a review DPC/screening committee to consider the case of the applicant for being placed in the select list and promotion with effect from the date his juniors have been accorded the same, strictly in accordance with the guiding principles and having regard to the observations made above, within a period of three months from the date of receipt of a copy of this order. In the event the applicant is found fit to be empanelled he should be accorded promotion to the rank of IGP w.e.f. 1.7.96 with all consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member (J)

S. Biswas

(S. Biswas)
Member (J)