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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

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ORIGINAL APPLICATION No. 76 of 1989

Ashok Kumar Misra

Applicant

versus

Union of India & others

Respondents.

Shri Anurag Srivastava

Counsel for Applicant.

Shri V.K. Chaudhary

Counsel for Respondents.

Coram:

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was recruited as a member of the U.P. State Police Service in the year 1969 and joined the service in the year 1971. He was posted on various posts in different districts and was given senior scale in April, 1980. He was promoted to the post of Additional Superintendent of Police when he was posted as C.O./<sup>W.S.</sup> City at Roorkee. According to the applicant his performance has been very good and he has also been given letter of appreciations for the work done by him and he has always been given excellent/remarks, except when he was posted at Moradabad as C.O. City, there was a riot in the month of August, 1980 at Meerut and for the said riot he was given adverse entry for the year 1980-81 which was communicated to him in the year 1982. He made representation to the Director General of Police who rejected the same whereafter he preferred a Memorium to the Governor

of Uttar Pradesh which is still pending disposal. Despite the said entry he was promoted as Additional Superintendent of Police in the year 1984. The grievance of the applicant is that although he was entitled to but he has not been promoted to the I.P.S. cadre, his name has not been included in the select list although the same should have been included and that is why he prayed that the respondents be directed to promote him, including his name in the select list of 1985 and the respondents be further directed to keep one post in the I.P.S. cadre reserved. Subsequently, by way of amendment, he has prayed that the order dated 18.4.89 reverting the applicant from the post of Additional Superintendent of Police to the post of Deputy Commandant, P.A.C. may be quashed and he may be continued on any cadre post of I.P.S.

2. The select list, which according to the applicant has been prepared, is not in accordance with the Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations 1985, which reads as under:

"5. Preparation of a list of suitable officers:

(1) Each committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period twelve months, commencing from the date of preparation

of the list, in the posts available for them under rule 9 of the Recruitment Rules, or 10 percent of the senior posts shown against items 1 and 2 of the cadre schedule of each state or group of States, whichever is greater.

(2) The Committee shall consider, for inclusion in the said list, the cases, of members of State Police Service upto a number not less than five times the number referred to in subregulation(1):

Provided that, in computing the number for inclusion in the field of consideration, the number of Officers referred to in sub-regulation (3) shall be excluded:

Provided further that the Committee shall not consider the case of a member of the State Police Service unless, on the first day of the January of the year in which it meets, he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in a post of Deputy Superintendent of Police or any other post included in the State Police Service which is declared by the State Government, with the prior concurrence of the Central Government, as equivalent in status and responsibility of that of a Deputy Superintendent of Police.

(4) The selection for inclusion in such list shall be based on merit and suitability in all respects;

Provided that where the merits of two or more officers are found to be equal, seniority shall be taken into account.

(5) The names of the officers included in the list shall be arranged in order of seniority in the State Police Service:

Provided that any junior officer who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

(6) The list so prepared be reviewed and revised every year.

(7) If in the process of selection, review or revision it is proposed to supersede any member of the State Police Service, the committee shall record its reasons for the proposed supersession."

According to the applicant, there were 17 vacancies and list of 34 persons was prepared but the applicant's name was not included in the said list, although he was fully eligible for the same. Shri A.K. Singh, N.R. Srivastava were senior to the applicant and R.D. Tripathi of 1966 batches and Shri K.N.D. Dwivedi and Shri Satish Yadav were of 1970 batch who were subjected to disciplinary enquiry even then their names were included in the select list so prepared and the said Satish Yadav and Shri K.N.D. Dwivedi were not promoted as Additional S.P. in the year 1984 and were also not placed in the the

list but their names have been placed in some other list. According to the applicant due weightage was not given to the service record of the applicant and the officer having inferior record of service and much junior to him were included in the list.

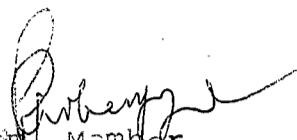
3. The Union Public Service Commission as well as the State of U.P. have filed the written statement and have opposed the prayer of the applicant. They have stated that the name of the applicant was not included in the list because sufficient number of persons were having better grading than the applicant. The Selection committee is to classify the grading of eligible officers i.e. 'outstanding', 'Very good' and 'good', as the case may be and overall relative assessment of the service record. In this connection reference has been made to the case of R.S. Dass vs. Union of India(AIR 1987 SC 593) which pertains to the case of I.P.S. service, wherein it was held that selection made of such officer though junior does not really amount to supersession and promotion made on merit, it cannot be said that senior officer has been superseded and non inclusion in the select list does not take away any right of a member of the State Civil Service that may have accrued to him as a Government servant, therefore, no opportunity is necessary for making representation against the proposed supersession. The view taken above has been re-affirmed by the Hon'ble Supreme Court in the case of H.L. Dev vs. U.P.S.C. and others (AIR 1988 SC 1069). According to the respondents Allahabad High Court, vide its order dated

16.1.1986 in writ petition No. 1449/85 'Basant Singh vs. State of U.P. and others restrained the respondents from making any promotion for the post of Superintendent of Police and Additional Superintendent of Police unless the seniority list is prepared in accordance with the directions issued by the Services Tribunal and further no select list for the IPS grade will be prepared without finalization of the seniority list. As per the decision of the Hon'ble Supreme Court in the case of Rana Randhir Singh and others vs. State of U.P. and others the above interim order ceased and the U.P.S.C. approved the select list on 27.12.88 and the list was prepared, and according to the respondents the said select list is not against the provisions of Regulation 5(6) of the I.P.S. (Appointment by Promotion) Regulation, 1955. There is no material from which it could be inferred that the officers having bad record were graded high and the applicant's record was not bad yet he has been excluded. It is difficult to accept such allegation in the absence of any material on record and what has been stated by the respondents is on the basis of record. It may that the applicant may not have adverse remarks and sometimes his record was good or sometimes bad. It is overall assessment which will be considered. If the adverse entry has not been expunged, in case the same is expunged and the same is taken account, and the applicant never informed of them which were taken into account, there being no allegation in this behalf and

in the matter of promotion sometimes junior can be selected earlier than the senior one or sometimes senior do not get promotion but it all depends on the assessment and no arbitrariness or malafide has been levelled against the selection committee which met. The norm of selection are made on the basis of service record and it cannot be said that the seniority list has not been made in accordance with the rules. As far as reversion is concerned, it has been pointed out by the respondents that the post of Superintendent of Police, Fatehpur is a temporary and non cadre post created on adhoc basis vide G.O. No. 5026/8/PS/2/1984 dated 1.12.84 and by the said G.O. 37 posts of Additional Superintendent of Police as specified in the said G.O. in 37 districts have been created and vide G.O. dated 1.9.86 33 posts were created which were to be filled in as specified in the G.O and thus the applicant was posted on a non cadre adhoc post. In view of the said G.Os the posts of Deputy Commandant Sitapur and Additional S.P. Fatehpur were non cadre adhoc posts and there is no reversion of the applicant at all.

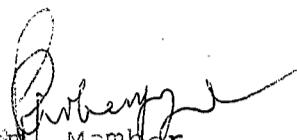
4. In view of this fact which could not be controverted successfully, obviously, the applicant, whose pay scale too has not been lowered, it cannot be said that any reversion order has been passed and accordingly, the applicant has failed to prove any ground of relief. Thus,

the application has got to be dismissed and it is dismissed. No order as to costs.

  
Adm. Member.

  
Vice Chairman.

Shakeel/-

  
Lucknow: Dated 6/1/1995