

2/2/1990

Hon. Justice Kamleshwar Nath, V.C.
Hon. K.J. Raman, Member (A)

O.A. No. 74 of 1989
 H.N. Srivastava Vs. Union of India & Others
 O.A. No. 93 of 1989
 S.K. Sharma Vs. Union of India & Others
 O.A. No. 76 of 1989
 A.K. Misra Vs. Union of India & Others
 O.A. No. 92 of 1989
 J.S. Agarwal Vs. Union of India & Others.

The four cases described above have been filed for inclusion of the name of the applicants, who are officers of the U.P. Police Service, in the Select List prepared for the year 1985 for promotion to the Indian Police Service.

2. The Select List of 34 officers was prepared in which the name of the applicants was not included; some persons junior to them were included therein.

3. The applicants have demanded production and inspection of their own Character Rolls as also the Character Rolls of five officers who, according to them, had distinctly poorer record of service than the applicants; these officers are mentioned to be B.B. Das, K.N. Dwivedi, Daya Shanker Singh, O.P. Tripathi and P.N. Pathak. They have also demanded production and inspection of the minutes of the Select Committee which framed the Select List.

4. Orders were passed by this Tribunal for the opposite parties to produce the Character Rolls of the applicants and the Minutes of the Meeting. Dr. Dinesh Chandra representing the Union of India and the Union Public Service Commission has produced the minutes of the Select Committee Meeting; ^{Shri} Anup Kumar appearing on behalf of the State of U.P. has produced the ACRs of the applicants. We have perused these papers.

5. Shri S.C. Budhwar, the learned counsel for ~~the~~ Shri H.N. Srivastava and S.K. Sharma has prayed for an opportunity to inspect these papers and also to require the opposite parties to produce the ACRs of these five officers named above for the counsel's inspection. Shri H.M. Mehrotra appearing for Shri A.K. Misra and Shri Kapil Dev appearing for Shri J.S. Agarwal have joined in the request made by Shri S.C. Budhwar.

6. The learned counsel appearing for the opposite parties have filed applications claiming privilege against the inspection of these papers by the counsel for the applicants.

7. We have heard the learned counsel for the parties at some length. We may mention that the counsel for the opposite parties said that they may file affidavits of the concerned officers claiming privilege, but we have not considered it necessary to do so and Shri S.C. Budhwar has no objection. We may mention that Administrative Tribunal has wider powers in the matters of procedure than the Courts; we think that considerations of substantial justice should outweigh the requirements of technicalities. The dispute in this case may affect a large number of officers. The case is getting delayed and therefore we have chosen not to wait for the formalities of making an affidavit to claim privilege. We treat the application of the counsel, made on the authority of the officers concerned, to be adequate for the purpose. In passing we may refer to the following statement^s of law at page 397 of Volume X of Halsbury's Laws of England 2nd Edition :-

" Documents need not be produced for inspection where an objection is taken in the affidavit of documents by the Head of a Public Department or other like State official, or by any responsible officer acting under the instructions of or with the consent of such Head of the Department that the disclosure of the information is contrary to public policy or detrimental to public interest or service".

8. We accept the statement of Dr. Dinesh Chandra and Shri Anup Kumar that they have been instructed by the competent authority to make the application claiming privilege.

9. The question of privilege in respect of the Minutes of the Select Committee Meeting has figured

before this Tribunal and other forums in several cases. The learned counsel for the applicant has referred to the cases of R.S. Das Vs. Union of India 1987 SC 593 para 28, Hari Ram Meena Vs. State of Rajasthan 1989(2) SLR 386 (CAT Jodhpur), K.V. Reddy Vs. Directorate General of Police, Andhra Pradesh 1989(2) SLR 230 (CAT Hyderabad) and a decision of the Full Bench of this Tribunal at the Principal Bench in the case of B.N.Rangwani Vs. Union of India & Others published in 1986-1989) Full Bench judgements of CAT at page 116. The decision in the case of P.Banerjee Vs. Union of India & Others ATR 1986 CAT 16 (Principal Bench) also figured before us. It has been held in all these cases that the proceedings of the Select Committee cannot be claimed as privileged in a case ~~0000~~ where the process of selection has been challenged. In the cases of B.N. Rangwani Vs. Union of India (Supra) and Hari Ram Meena Vs. State of Rajasthan the Tribunal directed that the documents shall be disclosed to the applicants. The right of production and disclosure affirmed in the case of Shri P.Banerjee Vs. Union of India & Others (Supra) however was not followed by actual inspection by the applicants because the applicants there left the record to the perusal of the Tribunal itself and did not insist upon inspection. The reasons of the proceedings being affairs of State or their disclosure being opposed to public interest and several other reasons were considered in these decisions and were rejected. It is not necessary to repeat those reasons here. The upshot is that the minutes of the Select Committee cannot be withheld from the applicants' counsel as prayed.

10. In respect of the ACRs there are two distinct classes :

(1) ACRs concerning the applicants themselves (2) ACRs concerning officers other than the applicants. In the case of B.N.Rangwani (supra), which was a case of

compulsory retirement and in the case of Hari Ram Meena Vs. State of Rajasthan (supra) which was a case for promotion, the prayer was to produce the ACRs of the applicants and those prayers were granted. Our attention has not been invited to any decision in which the applicants were also allowed to inspect the ACRs of officers others than the applicants themselves. We may point out that in the Full Bench case of B.N.Rangwani Vs. Union of India, the direction to inspect the official record was made subject to Sections 123, 124 of the Evidence Act under which the executive authorities are entitled to claim privilege. In that case privilege had not been claimed at all and that was one of the reasons for which the inspection had been allowed.

11. Our attention had not been invited to any decision which authorises an inspection of the ACRs of persons other than the applicants. We think that besides the claim of privilege by the executive authorities under Sections 123, 124 of the Evidence Act, the officers whose ACRs are under consideration are entitled to a protection under the General Law of the Land in the matter of disclosure and inspection of their ACRs. It is well recognised that apart from comments on general qualities, such as integrity, intelligence, industry, conduct, attitude of superiors with subordinates, relation to fellow employees, work ~~aptitude~~ aptitude etc. of the officers reported upon, the ACR has also to contain a summing up in general terms of the officer's good and bad qualities. It is expected therefore that Character Rolls would as a Rule give general appreciation of Character, conduct and qualities of the officer reported upon and a reference to specific incident could be made by way of illustration to support adverse comments of a general nature e.g. inefficiency, delay, lack of initiative, etc. Page 446 of Swamy's Complete Manual on 'Establishment Administration' for Central Govt.

Service 2nd Edn. (1988) may be seen in this connection. In other words, the ACRs are expected to contain the qualities, intellectual and moral of an officer for good or for bad; there may be remarks of approbation, there may be strictures of condemnation. The question is whether such documents should be open to the public gaze despite the being unpublished official records. We cannot lose sight of law of defamation, civil and criminal; and while the making and communication of derogatory remarks by the superiors to the subordinates may be privileged in the eye of law of defamation, their publication even through the Court may constitute actionable defamation under Civil Law and also in certain circumstances under the Criminal Law. We may refer to the provisions of Section 499 of the Indian Penal Code where publication of imputation concerning any person intending to harm or having reason to believe that such imputation will harm the reputation of such person constitutes a defamation except in cases excepted. Explanation 4 would show that an imputation is said to hurt a person's reputation when it lowers the moral or intellectual character of the person in the estimation of others. We should think therefore that before we make the ACRs of persons who are not party to the case open to public gaze, which will constitute publication, we must take care that such publication does not infringe the law of defamation. We may also say that the dignity of person is sought to be protected by the Constitution of India itself not only in its preamble but also in Article 51-A laying down the fundamental duties of a citizen. It is the bounded duty of the Tribunal therefore to ensure that the intention and the policy of law is not violated by any of the orders which this Tribunal may pass. The Tribunal must take a panoramic view of the entire situation and not confine itself to bare technicalities of the requirements of privilege; the Law of the Land

is far wider than the limited claim of privilege. We should hold therefore that the ACRs of officers other than the applicants themselves ~~cannot be disclosed~~ to the applicants. The disclosure of the applicants' own character roll to them is a matter of their own choice, and if they have chosen to run the risk of publication of material which may turn out to a defamatory they cannot complain of the injury which is suffered by them voluntarily; but we cannot impose any such burden upon other officers.

12. In this connection we may refer to the fact that in para 28 of their judgement the Hon'ble Supreme Court in the case of R.S. Das Vs. Union of India (Supra) have only spoken of "perusal of service record of the petitioner and its comparison with the service record of the officers who have been preferred"; the Supreme Court did not go on to say that the service records of other officers may also be inspected by the petitioner.

13. The limitation which we find necessary to impose in the matter of production and inspection of the ACRs has to be extended as a corollary to the contents of the Minutes of the Select Committee Meeting. In other words, while the categorization/gradation of the applicants by the Select Committee may be made available to the applicants for their perusal, as also ~~the~~ that of the officers who have been placed on the ~~the~~ select lists, it would not be proper to make available such categorization/grading in respect of other officers in the field of eligibility but not included in the select list. It will also be appreciated that a Select List is capable of being revised every time the Select Committee meets subsequently and therefore the categorization/grading of the officers other than those who have been placed on the Select List is capable of being varied in the proceedings of the Select Committees in later years. The up-shot is that Select Committee categorization/gradings for the year 1985 are relevant

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only for the year 1985 and are liable to change in later years in respect of officers who are not brought on the Select List. It would not be appropriate therefore to make available to the applicants the categorization/ gradation of officers other than those brought on the Select List, in addition to the applicants themselves in the present case.

14. These are the reasons for which we had passed a short order in the following terms on 2.2.1990 :-

" For reasons to follow we direct that the ACRs of applicants H.N.Srivastava, S.K.Sharma, A.K.Misra and J.S.Agarwal for the years from 1980-81 to 1984-85, which have been produced before us may be inspected by the applicant's counsel, that the ACRs of B.B.Das, K.N.Dwivedi, Daya Shanker Singh, J.P.Tripathi and P.N.Pathak shall be produced before this Tribunal for the perusal of the Tribunal but shall not be inspected by the counsel for the applicants, that a true copy of the minutes of the meeting of the Select Committee in which the impugned Select List was prepared, alongwith Annexure-2 and only that part of Annexure-I which contains the names of the applicants and of the persons placed in the Select List, Annexure-2 shall be submitted to the Tribunal which also the applicant's counsel will be at liberty to inspect. It is further directed that the information collected by the applicants from the above material shall not be used by them for any purpose other than for the purposes of these four cases. The case be listed for further arguments at Allahabad on 13.2.1990 when the opposite parties shall produce the material as indicated herein. "

(Signature)
Member (A)

(Signature)
Vice Chairman