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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCH

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T.A. No.397/87

198

Pronouncement of the Judgment:
DATE OF ~~DECISION~~ 6-4-1988

Vasant Waman Pradhan Petitioner

Mr.R.A.Dada with Mr.K.Y.Mandlik Advocate for the Petitioner(s)

Versus

State of Maharashtra & Ors. Respondent

Mr.M.I.Sethna Advocate for the Responace(s)

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice-Chairman

The Hon'ble Mr. P. Srinivasan, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? — Yes
2. To be referred to the Reporter or not? — Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? — No
4. Whether it needs to be circulated to other Benches of the Tribunal? — No

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Appln. No. 397/87

Vasant Waman Pradhan,
406, "Shalaka",
Maharshi Karve Road,
Bombay - 400 021.

.. Applicant

vs.

1. State of Maharashtra.
 - 1a. K.G. Paranjpe,
Chief Secretary,
5th Floor, Mantralaya,
Bombay - 400032.
 - 1b. Union of India,
Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. D. Ramachandran,
Special Inspector General,
of Police, C.I.D.,
Old Council Hall,
Shahid Bhagat Singh Road,
Bombay - 400 039.
 - 2A. Shri S.V. Bhave,
Director,
Anti Corruption Bureau,
Crescent House,
19, Ballard Estate,
Bombay - 400 038.
 - 2B. Shri R. Rengaraju,
Commandant General Home Guards,
Old Secretariat Annexe,
Bombay - 400 032.
3. S.T. Taman,
D.I.G. Thane Range,
Konkan Bhavan, Vashi,
New Bombay.
4. Sudhakar Deo,
Addl. Commissioner of Police
Greater Bombay,
Office of the Commissioner of
Police, Near Crawford Market,
Bombay.
5. N.C. Venkatachalam,
Addl. Commissioner of Police,
Greater Bombay,
Office of the Commissioner of
Police,
Near Crawford Market,
Bombay.

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6. K.Padmanabhan,
D.I.G.(Traffic),
Office of the Director General
of Police,
Shahid Bhagat Singh Road,
Bombay - 400 039.
7. S.N.Pathania,
D.I.G.Railways,
Western Railway Office,
Churchgate,
Bombay.
8. A.J.S.Samra
D.I.G.Kolhapur Range,
Office of the D.I.G.
Kolhapur.
10. V.K.Saraf,
Commissioner of Police Bombay,
Near Crawford Market,
Bombay.
11. S.Rammurthy,
Commissioner C.I.D.(Int.),
Old Council Hall,
Bombay - 400 039.
12. T.R.Varadrajan,
Director of Tourism,
9th Floor, Express Towers,
Nariman Point,
Bombay - 400 021.
13. S.K.Varma,
Inspector General of Police,
Prisons, Central Office,
Poona - 1.
14. B.J.Misar,
Commissioner of Police,
Pune Contonment,
Pune - 1.
15. M.L.Wadhwa,
Commissioner of Police Thane,
Kharkar Ali,
Thane.
16. S.K.Seth,
Commissioner of Police, Nagpur
Sadar, Nagpur.

.. Respondents

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Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil
Hon'ble Member(A) Shri P.Srinivasan

Appearances:

1. Mr.R.A.Dada,
Advocate with
Mr.K.Y.Mandlik
Advocate for the
Applicant.
2. Mr.M.I.Sethna,
Counsel for
the Respondent
Nos.1,1(a) and 1(b)
3. Rest of the Respon-
dents are absent.

JUDGMENT

Date of pronouncement of

(Per B.C.Gadgil, Vice-Chairman)

the Judgment: 6-4-1988

Writ Petition No.623/85 of the file
of the High Court of Judicature at Bombay is
transferred to this Tribunal for decision.

2. The applicant joined Indian Police
Service on 7-10-1955. In due course he was promo-
ted to the higher post viz.(i) the post of Superin-
tendent of Police (ii) Selection Grade in the post
of SP and (iii) Deputy Inspector General of
Police. The next promotional post is that of
Deputy Inspector General-Level I and thereafter
Special Inspector General. The applicant was not
promoted to the post of DIG Level-I with effect
from 8th June, 1983. Similarly he was refused
promotion to the post of Special Inspector
General with effect from November, 1984 though his
juniors have been promoted in this post. The
following remarks ~~for the year 1983-84~~ were commu-
nicated to the applicant:

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"He is an average type of Officer. He will not be of much use to Government in most of the assignments at his level. Work not upto the mark. His integrity is doubtful as complaints against him were received about asking money form subordinates."

At this very stage it is material to note that as stated in paragraph 8 below the reporting officer has written very good remarks. The applicant claims that these adverse remarks should be expunged and that they should not be taken into account for his promotion to the post of DIG Level I and also to the post of Special IG. He has prayed that the Establishment Board(which considers the promotion and selection to the post of DIG Level I and Special IG)should be reconvened and that the claim of the applicant for these posts should be assessed after ignoring the above mentioned adverse remarks.

3. After the petition was filed for getting the above mentioned reliefs certain developments have taken place. The applicant made a representation against the above mentioned adverse remarks. That representation was partly accepted meaning thereby that the adverse remarks about the Integrity was expunged. The applicant was then considered for the promotion to the post of DIG Level I and in May, 1985 he was promoted to the post with effect from 8th June, 1983. We have already observed that the applicant was not considered for the post of Special IG in the meeting of the Establishment Board held in 6-11-1984 as at that time he was not promoted

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to the post of DIG Level I. When the matter was in the High Court certain interim orders were passed directing the Government to consider the applicant for the post of Special IG. This was done. The High Court was informed that for selection to the post of Special IG one must get the grading B+ and that the applicant got the lesser grading i.e. 'B' and that for this reason the applicant was not eligible for promotion. However, these interim proceedings would not be of much relevance in view of the discussion in the following paragraphs.

4. It is not necessary to consider in detail the various averments made in the application as also various contentions raised by the respondents. Suffice it to say that the applicant challenges the adverse remarks for the year 1983-84 and denial of his promotion to the post of Special IG on the ground that on 6-11-1984 the Establishment Board considered his claim after taking into account the adverse remarks of ¹⁹⁸³⁻⁸⁴ 1984 which the applicant contends are liable to be expunged. The respondents want to meet this case by contending that the adverse remarks (which remain operative after a portion thereof was expunged) were relevant for considering the claim of the applicant, that the Establishment Board rightly placed the applicant below Grade B+ so as to refuse promotion to the post of Special IG.

5. There is a controversy between the parties as to whether the Annual Confidential

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Reports of the applicant and of the other officers who were considered by the Establishment Board on 6-11-1984 were privileged documents. However, a part of the controversy would not now survive since it is settled law that confidential reports are no longer secret when promotion based on such reports is challenged by the Govt. servant before a Court of law. The respondents also claimed privilege against the production of proceedings of the Establishment Board. Before considering this claim of privilege we directed the respondents to show us the relevant proceedings of the Establishment Board. We told the learned advocates that the question of privilege of these proceedings will be considered if at all an occasion should arise hereafter.

6. Perusal of the Confidential Reports shows that in 1981-82 the reporting Officer Mr.S.K.Chaturvedi has written a very good report. It is not necessary to reproduce this report. Suffice it to say that they are very good. Then the matter went to the reviewing authority viz. the Home Secretary Mr.B.K.Chowgule. He has stated as follows:

"I do not agree with the report of the reporting officer. He did not impress me as a Active Officer. I would rate him as just an average officer. Not yet fit for promotion."

For the next year i.e. 82-83 the applicant got

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similar very good confidential reports from Shri K.P.Medhekar, Director General and Inspector General of Police. During this year there were two reviewing officers viz. two Home Secretaries. Mr.B.K.Chowgule made the review for a part of the period. Mr.D.N. Kapoor has reviewed the report for the remaining period. Both of them agreed with the reporting officer's remarks. Thereafter, comes the confidential remarks for the year 83-84 (reporting officer gave good report; but the reviewing officer made certain adverse remarks) to which we have already made reference.

7. Mr.Dada, for the applicant contended that the above mentioned adverse confidential reports have been entered by the reviewing officer in a malafide manner. We do not intend to go into this aspect of the case for two reasons. In the first place there is no cogent and sufficient pleading about the malafides. Secondly the person against whom the malafides are allege is not made a party. His next contention is however worth considering. We have already reproduced the adverse remarks passed by the reviewing officer for the year 1981-82 and 83-84. The remarks for 83-84 about the alleged want of integrity have already been expunged by the Govt. itself. The adverse remarks of 81-82 and the unexpunged remarks for the year 83-84 still remain. However, the remark for 81-82 has not been communicated to the applicant. It is now well known that an uncommunicated adverse remark cannot be taken into consideration while considering the

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promotion of an employee. Consequently consideration of the uncommunicated adverse remarks for 81-82 by the Establishment Board in its meeting on 6-11-1984 was obviously erroneous and the resultant opinion of that Board about unsuitability of the applicant for the post of Special IG would not be acceptable. It would be necessary to direct the respondents to hold a fresh review meeting of the Establishment Board to consider, after ignoring the adverse remarks for 1981-82, the case of the applicant along with the other eligible candidates as were available at the time of meeting dtd. 6-11-1984 and to take appropriate decision. We have been informed that the grading of B+ is a must for getting the promotion. The information given by the respondents to the High Court shows that the applicant was awarded 'B' Grade. Obviously that grading of 'B' would not remain as 'B' if the adverse remarks of 81-82 are omitted from consideration. It would not be out of place here to observe that the adverse remarks of 81-82 ^{of the reviewing officer, Sri Chougale,} are vague and subjective in character. In addition they do not square with his own observations in review for the immediate next year when the same officer has agreed with a good report of the reporting officer. Of course this aspect need not detain us long as we have already held that the said report for the year 1981-82 has to be totally ignored as that remark was not communicated to the applicant.

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8. As far as the adverse remarks for the year 83-84 is concerned Mr.Dada submitted with much force that the said remarks are also vague and are purely subjective in nature. This types of vague remarks have to be viewed and assessed after taking into account the fact that the reporting officer had applauded the applicant for his various qualities such as intelligence, quick grasp, possession of general knowledge, capability to do hard work, promptness and willingness to accept the responsibility. It was rightly submitted that in the peculiar facts of the case the remaining adverse remarks for the year 83-84(written by the reviewing officer) deserves to be expunged. After perusing the relevant record on the subject we direct that the remaining adverse remarks for the year 1983-84 be expunged.

9. The suitability or otherwise of the applicant for the post of Special IG will have to be decided afresh on the basis that adverse remarks for the year 1983-84 are fully expunged. As stated above the rating given to the applicant as 'B' would necessarily improve substantially if these remarks are also not taken into account. Of course we must add that this aspect about the improvement of the rating is primarily for the Establishment Board to decide. However, we felt it necessary to refer to this aspect of the matter as it is important.

10. Another question that was posed by Mr.Dada is as to how the applicant who was

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found suitable for the promotion to the post of DIG Level I with effect from 1983 would become so bad in the next year that he could not get similar rating of B+ when he was considered for the post of Special IG. This submission would not be acceptable in each and every case because an employee who is very good may, on account of certain strong intervening circumstances in the next year, become bad. Similarly the rating of an employee may also improve in the next year. Mr. Dada, however, contends that once the adverse remarks of 1981-82 and 83-84 are ignored there would be nothing which would make a good officer bad. This again is a matter primarily for the Establishment Board to consider and it is not necessary to state that we are quite sure that the Establishment Board will consider this aspect while taking a decision in the review meeting to be held in compliance with this judgment.

11. Special IG posts were filled in on the basis of the minutes of the meeting of the Establishment Board held on 6-11-1984. Thereafter some more posts of Special IG were filled in. For that purpose another meeting of the Establishment Board was held. We are told that at that time the applicant was not considered as the guidelines of 1976 provide that an officer not included in the panel in the first instance would be eligible for consideration only after having two more

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reports. The correctness or otherwise of this guideline is not covered by the present litigation and hence we are not considering and deciding the question as to whether the action taken by the Govt. in not considering the applicant for the post that became available subsequent to 6-11-1984 is good or bad.

12. Before concluding we would like to add that the points other than those which we have discussed in this judgment have not been considered and decided by us.

13. Thus the application succeeds. We direct the respondents to reconvene the Establishment Board with a view to consider the claim of the applicant for the post of Special IG as on 6-11-1984 along with the officers who have been promoted on the basis of the Establishment Board meeting held on that day and to pass appropriate orders. The said consideration should be made in the light of the directions and observations made in this judgment. This order should be complied with within a period of two months from today.

14. Parties to bear their own cost of the litigation.

B.C. Gadgil
(B.C.GADGIL)
Vice-Chairman

P. Srinivasan
(P. SRINIVASAN)
Member(A)

The applicant and Respondents' advocates - Shri J.D. Desai (for ASHA M. S. Sharma) are present. This judgment is pronounced in open court - today.

B.C. Gadgil
6-4-1988

(23)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.397/87.

Shri V.W.Pradhan.

...Applicant

V/s.

1. State of Maharashtra & Ors.


...Respondents.

Tribunal's Order:

Dt. 10.6.1988.

Heard Mr.M.I.Sethna, the learned advocate for the respondents and Mr.G.S.Walia, the learned advocate for the applicant. By our judgment and order dt.06.4.1988 we had directed the respondents to comply with the order within a period of two months from the date of the order. On 6.6.1988, the respondents have filed the present Misc.Petition No.293/88 requesting for extension of the period. It is stated in the application that the respondents have filed Special Leave Petition against the judgment of this Tribunal in the Supreme Court on 11.5.1988. It is further stated that again on 23.5.1988 the Supreme Court was moved, but in view of the vacation of the Supreme Court the Supreme Court was not inclined to consider the admission of the S.L.P. during the vacation and has posted the S.L.P. after the opening of the vacation. The Supreme Court re-opens on 11th June, 1988. As the point involved in this case is an important one having wide repercussions we extend the period for complying with the orders of this Tribunal upto 6.8.1988. Misc. Petition No.293/88 is disposed of.

(J.G.RAJADHYAKSHA)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J).