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14/6/91


Heard Mr. M. S. Bhandari Adv for
the applicant & Mr. M. I. Sethana
Adv for the respondent
Part heard

Adjourned to 21/6/91 for
further hearing


(M. S. Bhandari)
M(A)


(V. C. Srivastava)
V C

Dated 21/6/91

Heard Both the
Counsel. Judgement
reserved
by


(M. S. Bhandari) (V. C. Srivastava)
M(A) (V.C)

Res Tribunal 9/7/91

Neither the applicant nor
his Advocate was present
Mr. B. I. Bhatker Advocate
by Mr. M. I. Sethana Advocate
for Respondent was present
Judgement pronounced by the
the Hon'ble Member (A) Jm.
M. S. Bhandari today

1308
9/7/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(27)

NEW BOMBAY BENCH

O.A. No.489/86, 129/88 & 866/89
T.A. No. 198

DATE OF DECISION 9-7-1991

Ahindra Nath Banerjee Petitioner

M.S.Bhandari, & M.A.Mahalle Advocate for the Petitioner(s)

Versus

State of Maharashtra & Ors. Respondent

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

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(U.C.SRIVASTAVA)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.489/86., O.A.129/88 & O.A.866/89

O.A.489/86

Ahindra Nath Banerjee, I.P.S.,
Flat No.26, Sagar Tarang Co-op.
Housing Society Ltd.,
Plot No.15-A, Khan Abdul Gaffarkhan
Road,
Worli Seaface, Worli,
Bombay - 400 025.

.. Applicant

vs.

1. State of Maharashtra
2. The Chief Secretary to the
Govt. of Maharashtra,
Mantralaya,
Bombay - 400 020.
3. The Secretary,
Govt. of Maharashtra,
Home Dept.,
Mantralaya,
Bombay - 400 020.
4. Union of India
through
The Secretary,
Ministry of Home Affairs
(Personnel),
New Delhi.

.. Respondents

O.A.129/88

Ahindra Nath Banerjee, I.P.S.

.. Applicant

vs.

1. State of Maharashtra
(through respondent No.2)
2. Additional Chief Secretary
to the Govt. of Maharashtra,
Home Department,
Mantralaya,
Bombay.
3. Union of India
(through Respondent No.2)

.. Respondents

O.A.866/89

Ahindra Nath Banerjee, I.P.S.

.. Applicant

vs.

1. Union of India
through
The Secretary(Personnel)
Ministry of Home Affairs,
Govt. of India,
New Delhi.
2. State of Maharashtra
through
Chief Secretary,
Govt. of Maharashtra
Mantralaya, Bombay-400032.

3. Secretary,
Home Department,
State of Maharashtra,
Mantralaya,
Madam Cama Road,
Bombay - 400 032.
4. Shri R.S.Kulkarni,
Director General of Police,
State of Maharashtra,
State Police Mukhyalaya,
Shaheed Bhagatsing Road,
Colaba,
Bombay - 400 039.
5. Shri A.M.Mistry,
Director of Anti Corruption
and Prohibition Bureau,
State of Maharashtra,
Ballard Estate,
Bombay.
6. Shri D.Ramachandran,
Commandant General of
Homeguards, Maharashtra State,
Old Sachivalaya, Mayo Road,
Bombay - 400 032.
7. Shri R.Rengaraju,
Addl. Secretary,
Home Department,
Maharashtra State,
Mantralaya,
Madam Cama Road,
Bombay - 400032.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman
Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances;

1. Mr.M.S.Bhandari
Advocate for the
Applicant in
O.A.489/86 & O.A.129/88
2. Mr.M.A.Mahalle
Advocate for the
Applicant in
O.A.866/89
3. Mr.M.I.Sethna
Counsel for the
Respondents

JUDGMENT:
(Per U.C.Srivastava, Vice-Chairman)

Date: 9-7-1991

These three applications have been
filed by one Shri AhindraNath Banerjee an officer
of the I.P.S. Maharashtra cadre who has been
compulsorily retired from service some 11 months
prior to attaining the age of superannuation.
He has filed three applications which have been
heard and are being disposed of together.

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2. In O.A.489/86 the applicant has prayed for declaration ^{that} ~~of~~ All-India Services(Confidential Rolls)Rules,1970 are ultra-vires and the All India Services Act,1951 as null and void, of no effect as they suffer from the vice of unbridled unguided excessive delegation of power, and as the terms "adverse remark" and "critical remark" are not defined and are liable to be misconstrued and that no guidelines have been laid down for the last 10 years on the effect of adverse remarks though enjoined by Rule 10A thereof. He has also prayed that it may be declared until and unless the Government of India issues the administrative guidelines/executive instructions on the "effect" of the adverse/critical remarks on the conditions of service as contemplated by Rule 10A of the All India Services(Confidential Rolls)Rules,1970 no effect to the adverse remarks be given, and has also prayed for a declaration that the adverse/critical remarks given to him for the year 1983-84 are malafide,malicious and myopic, unwarranted unjustified and untrue, illegal,improper and irregular in the matter of their writing,reviewing, recording,accepting and communicating are nulland void and of no effect whatsoever,

3. It may be noted here that at the time of arguments the legality and validity of the All India Services(Confidential Rolls)Rules,1970 and that of All India Services Act,1951 were not challenged and the attack was on the entry so given and the way and manner in which it was given and the representation against the same was disposed of.

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4. O.A.129/88 filed by the same applicant is directed against the order of compulsory retirement as per sub-rule 3 of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958.

5. In O.A.866/89 the applicant has prayed that the respondents may be directed to promote the applicant to the rank of Addl. Inspector General of Police with effect from 21.5.1981 and he may be accorded due seniority in that cadre and the emoluments attached to the post of Addl. Inspector General of Police with subsequent increments be granted to the applicant with interest on arrears referred to above and to direct the respondents to have the proforma D.P.C of Special I.G.P. and the Director General of Police and give the promotion as per the guidelines. Prior to the filing of this application the applicant earlier filed a Writ Petition 800/1981 before the Bombay High Court challenging the supersession by six officers who were promoted to the post of Additional Inspector General of Police on 6.6.1981 superseding him. The case was transferred to this Tribunal and the Tribunal vide its judgment dated 3.9.1987 held that the action of the State Government and Establishment Board in not considering the case of the applicant for promotion to the post of Addl.I.G. on 21.5.1981 was illegal and they were directed to consider the same within a period of four months for the post of Addl.I.G. after ignoring the fact that the applicant had not completed four years of service as DIG in May, 1981 and in case he is found fit give him the benefit of selection to the said post from the date his junior is selected to that post. As the applicant's case was not considered within time he moved another application before the Tribunal praying that he may be declared to have promoted as Additional Inspector General. The Tribunal disposed of the said

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application vide order dtd. 26-9-1989 permitting him to withdraw the said petition in respect of prayers C&D with opportunity to file fresh application if permissible under the law and that is why this application has been filed by him.

6. The applicant joined the Indian Police Service on or about 14th October, 1954 as Asstt. Superintendent of Police. He was promoted to the rank of Superintendent of Police in or about 1960. After serving as Superintendent of Police in various district in the year 1965 he went on deputation to Manipur Rifles, First Battalion and participated in Indo-Pak War in 1965 and was awarded Special Duty Medal. He worked as Deputy Home Secretary from 1970 to 1974 and was on deputation to the Maharashtra State Road Transport Corporation as Chief Security Officer. From 13-5-1974 to 10-8-1975 the applicant worked as Supdt. of Police (Law & Research) Pune. Thereafter he was posted in Indian Railways at Nagpur. On or about 15-5-1976 he was ~~xxx~~ given selection grade. From 1976 to 1978 the applicant was in the State Traffic Branch and worked as General Manager, Police Housing and Welfare Corporation. On or about 31-1-1981 he was promoted to the post of Deputy Inspector General and was posted as D.I.G., C.I.D. Intelligence (Criminal Wing) at Bombay. From May, 1984 to October, 1985 he was on deputation to MSRTC. In or about October, 1985 he was posted as D.I.G., P.C.R. at Bombay which post he continued to hold.

7. On or about 9th October, 1984 the applicant received a D.O. letter dtd. 9-10-1984 from the Special Secretary, Home Department (Law & Order) Government of Maharashtra communicating certain adverse remarks contained in the Annual Confidential Report for the year 1983-84, which

reads as follows:-

"A slopy officer, unimpressive, does routine work. Has fairly good knowledge of his work, but has little originality, maintains good relations with everybody. He had to be told to send his reports in time. His overall performance was below average. He was too fond of only moving around with no output. His work was of a sub-standard type."

The applicant made a representation against the same on 11-10-1984. Vide order dated 23rd July, 1985 the Home Secretary, Govt. of Maharashtra rejected the said representation. The applicant submitted representation by way of appeal against the same to the Government of India. He also represented a memorial to the President on 16th August, 1985 and according to the applicant no orders have been passed. .

8. According to the applicant adverse remarks against him were not warranted in view of his work, contribution of the department, versatile personality and also the publications and other qualifications including knowledge of nine languages and research articles etc. by him.

9. The learned counsel for the applicant contended that while rejecting the representation filed by the applicant against the adverse remark reasons should have been assigned and opportunity of hearing should have been given. Although an authority ~~yes~~ one way or the other in this behalf by the Tribunal on the facts of the case under the same was decided but this plea is now no longer open to the applicant in view of a decision of the Supreme Court in the case of Union of India v. E.G. Nambudiri, 1991(1) SCALE 783. The Supreme Court held in that case that No order of an administrative authority communicating its decision is rendered illegal

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on the ground of absence of reasons ex facie and it is not open to the Court to interfere with such orders merely on the ground of absence of any reasons and the President will have no obligation to record the reasons as such the order was not vitiated.

10. In this case it is to be noted that from the reply filed by the respondent it appears that the memorial filed by the applicant is still pending with the President and the same has not yet been decided.

11. Learned counsel also challenged the adverse entries and contended that there was no material for giving such an adverse entry and these adverse entries are rather from the very nature prejudicial and seems to have been done with one stroke of pen in a particular hour when the officer concerned was under either annoyance or feeling towards the applicant. We may add here that from the original record which we have perused we found regarding the fitness of the applicant for promotion to the latter post below the entry it was noted that he is not fit for promotion and it was even mentioned that he is not fit for any post. The implications of such entries obviously which was not communicated are far reaching. There could be no dispute that entries in ACR though of administrative nature are to be given very carefully and representation against the same is also to be considered in that light. In this connection the cases of Brijmohan Chopra v. State of Punjab, AIR 1987 SC 948 and Baldev Raj Chedha v. Union of India, AIR 1981 SC 70 are referred to. Five years record was considered. Obviously there was no question of consideration of earlier record when the review committee itself was of the opinion that his record was good in the year 1980. In the year 1981-82 he was

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shown to be an average officer while in 82-83 he was shown just above average. Both the years he was not recommended for promotion. In 83-84 he was reported to be below average which was communicated to him. In 84-85 he was reported to be above average and in 85-86 he was reported to be below average. So far as his average entries are concerned obviously average entries cannot be said to be adverse. There is no denial of the fact that the adverse remarks were not communicated to him and when the Screening Committee or Review Committee took a decision these adverse remarks were communicated to him. Thus the remarks represents assessment of performance and conduct of the officer by the superior. Though the assessment is subject to but the same must be formed on objective appraisal of material and is not to be done arbitrarily. In the instant case it is to be noted that sweeping remarks have been given and no material have been placed before us from which it could be said as to whether there was any material with the authority concerned to give such a remark when a few years earlier the officer was given selection grade in 1976 and was promoted to the post of DIG on 31st January, 1981 itself. In 84-85 he was on deputation to MSRTC. But in view of the fact that as the applicant's memorial is still pending with the President we would not like to enter more into the matter but we do expect that ~~his~~ if his representation is not yet decided will be decided expeditiously say within a period of 2 months from the date of communication of this order taking into consideration the grievance and pleas of the applicant and taking into consideration the legal and factual position in this behalf.

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12. In O.A.129/88 the applicant has been retired compulsorily under Rule 16 of the All India Services(Death-cum-Retirement Benefits)Rule,1958 in public interest on attaining the age of 55 years. The rule under which he has been retired reads as under:

"16. Superannuation, gratuity or pension -

- (i)
- (ii)
- (iii) The Central Government in consultation with the State Government may require a Member of the service who has completed 30 years of qualifying service or who has attained the age of 55 years to retire in the public interest provided that atleast three months' previous notice in writing will be given to the member concerned
- (iv) "

From the record produced before us we have found that the Screening Committee after taking into consideration the entries after 1980 recommended his compulsory retirement and the Review Committee has also agreed to the same and thereafter he was retired.

13. In the written statement filed by one Pradeep Singh, Director, Ministry of Home Affairs, Government of India it has been stated that the applicant was compulsorily retired in public interest, inter-alia, as he had consistent record of below average reports. It further states that a person holding such a high office has stated facts which are not correct and against the record thus making himself responsible for judicial action inasmuch as the same tantamounts to misleading the Court or in getting a judicial order on the basis of such incorrect averments. The proceedings indicate that the applicant's representation which was pending

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against the adverse remarks was not considered by the Screening Committee or the Review Committee. The Review officer's remark that he was not fit for promotion at all and that he is not suitable for any job were not communicated to the applicant which obviously put before the Screening Committee and the Review Committee, after which the applicant was recommended for compulsory retirement.

14. In the case of Baidyanath Mahapatra v. State of Orissa, AIR 1989 SC 2218, the compulsory retirement was set aside on the ground that representations against the adverse remarks which was pending was not considered and the adverse remarks without representation were considered. The same position arises in this case. The uncommunicated remarks and the non consideration of representation against the adverse remarks obviously was the cause of retiring the applicant ^{compulsorily} and the order ^{compulsory} of retirement was basically illegal and was not in public interest. As such the order of compulsory retirement which is made some 11 months before attaining the age of superannuation is illegal, prejudicial and consequently the same deserves to be quashed.

15. Accordingly we allow this application and orders dated 28th January, 1988 and 9th February, 1988 are hereby quashed and set aside with all consequential benefits.

16. The third O.A. viz. O.A. 866/89 is for directing the respondents to promote the applicant to the rank of Addl. Inspector General of Police with effect from 21-5-1981 and for the consequential reliefs which flow out of it. The reliefs sought in this application are already referred at para 5 above.

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17. The applicant was promoted to the post of D.I.G. on 31-1-1981. At that time there was only one rank of Deputy Inspector General of Police. Vide G.R. dated 22nd April, 1981 the post of Deputy Inspector General was upgraded and they were designated as Additional Inspector General of Police. The upgradation was made in order to provide further channel of promotion and to mitigate stagnation of the cadre of Deputy Inspector General of Police. By Establishment Board consisting of the department authorities considered the names of DIG Level II for upgradation to the post of Additional Inspector General of Police and they considered the officials who have put in four years of service and as the applicant ~~has~~ not completed four years of service although he was senior to the respondents No.4,5,6 & 7 he was not considered and six officers were promoted.

18. A reference to the writ petition filed by the applicant which was transferred to the Tribunal and subsequently withdrawn has already been referred to above. The applicant has challenged his non promotion on the ground that the upgradation of the post of DIG Level II does not involve promotion since the duties and responsibilities of both these posts are the same and the incumbent of any posts of D.I.G. can be Officer of either in the grade of DIG Level I or DIG Level II. As no promotion was involved it was only the seniority that has to be counted. In this connection the applicant has relied on the affidavit filed by S.D.Limaye, Deputy Secretary to the Govt. of Maharashtra in Writ Petition No.623/85(V.W.Pradhan v. State of Maharashtra). It was vide resolution dtd. 22-4-1981 six posts of DIG Level II to DIG Level I were upgraded and in the beginning when the posts were upgraded they were only known as Additional

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Inspector General of Police and subsequently they were known as DIG Level I. According to the applicant the non consideration of the applicant in the first meeting on 21.5.1981 and subsequently justifying the same is arbitrary and violation of Article 14 of the Constitution of India. It has been alleged that his case has been considered in isolation and ^{There has not been} comparative assessment and merits of ^{all} eligible candidates as is required under the Rules of All India Services. This has rendered the selection process invalid. In this connection the applicant has relied on the case of Union of India v. M.L.Kapur 1973(2)SCC 836. The applicant contended that he was wrongly excluded from the promotion post and his juniors were promoted.

19. In the written statement filed on behalf of the respondents it has been stated that ~~xxxx~~ the Writ Petition filed by the applicant transferred to the Tribunal only partly succeeded and the directions given by the Tribunal on 3.9.1987 referred to above were complied with. The Establishment Board in its meeting dtd. 23.11.1987 considered the case of the applicant, his ACR for the years 1975-76 to 1979-80 as per the direction of the Tribunal and the Establishment Board took into consideration the ACR of 1980-81 and after evaluating his work as DIG the Establishment Board was of the view that the applicant was not fit for promotion as Additional Inspector General of Police on 21.5.1981 and this recommendation was accepted by the State Government. ~~In the proceedings which have been produced before us~~ The Establishment Board ~~was held on~~ proceedings which was held on 23.11.1987, a copy of which produced before us, it has been observed ^{that} ~~by~~ the Establishment Board took into consideration 5 years confidential record from 75-76 to 79-80 of concerned officers and the same

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criteria was applied in the case of the applicant and his confidential records of 5 years i.e. 1975-76 to 79-80 was assessed. During these five years he worked as ~~Superintendent of Police~~ SP and his assessment pertains to his performance as an SP and on the basis of the same confidential records he was promoted as DIGP on 31-1-1981. So far as his promotion to the post of Additional IGP is concerned his ACR for the year 80-81 (when he was on the post of DIGP) ^{was} taken into consideration and assessed his performance as DIGP. But he could not earn necessary eligibility in 1981 for the promotion to the post of ~~Additional~~ Additional IGP and hence the Establishment Board found that he was not eligible for the promotion as Additional IGP on 21.5.1981 and made recommendations accordingly.

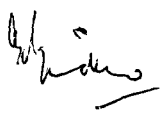
20. The Tribunal's order dtd.3.9.1987 reads as follows:-


"The net result, therefore, is that the application partly succeeds. The action of the State Government and the Establishment Board in not considering the case of the applicant for promotion to the post of Addl.I.G. on 21.5.1981 is illegal. The State Government and the Establishment Board are hereby directed, to consider expeditiously, say within a period of 4 months the case of the applicant as on 21.5.1981, for the post of Addl.I.G. after ignoring the fact that the applicant had not completed four years of service as DIG in May, 1981. It is needless to say, that if on such consideration, the applicant is found fit for selection he would have the benefit of selection to the post of Addl.I.G. from the date his junior is selected to that post after 21.5.1981. Parties to bear their own costs of the application."

21. According to the applicant the constitution of the Board itself was defective as the important members who are supposed to ^{be} aware of the work of the applicant could not be present for the meeting. Instead of that one outside-r viz. S.P.Singh, Spl.I.G.P(L&O) attended the meeting of the Board. According to the applicant the said S.P.Singh was at one place senior to him and one of the candidates ^{for} the promotion post in which he ~~also~~ contested. He ^{also} secured the promotion but the applicant was not promoted. According to the applicant the absence of the important members who are aware of the work of the applicant and the effect of the presence of an outsider influenced the decision of the Board as such the proceedings of the board become void. The so called board also ~~does~~ ^{has} not acted in accordance with the directions of the Tribunal.

22. Accordingly we allow this application and direct the respondents that let another Establishment Board be set up again to consider the case of the applicant within a period of three months from the date of receipt of a copy of this order and in case they ^{find} ~~found~~ him fit for promotion he may be given notional promotion with consequential benefits.

There will be no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman