

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT NEW BOMBAY.

Coram: Hon'ble Mr. M.B. Mujumdar, Member (J)

and

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

DATED THIS THE THIRTEENTH DAY OF APRIL, 1987.

Tr.ApplicationNo. 137 of 1986

Between:

Sharadchandra Vattatraya Rege

....Applicant

and

State of Maharashtra & others.

....Respondents.

Appearances:

1. Mr. S.D. Rege, party in person.

2. Mr. M.I. Sethna, Advocate for respondent.

JUDGMENT: (Per P.Srinivasan, Member (A)).

This application originated as writ petition No. 754/81 before the High Court of Bombay. In the petition, as it was originally filed, there are a large number of prayers. When the matter was taken up for hearing today, the applicant, who argued his case personally, confined himself to his supersession for promotion at the meeting of the Establishment Board (EB) held originally on 21.5.1981 and the Review meeting of the EB held on 12.3.1982. In the meeting of the EB held on 21.5.1981, the applicant



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was passed over for promotion from the post of Deputy Inspector General of Police ('Dy.IGP') to that of Special Inspector General of Police ('Spl.IGP'), while three of his juniors were recommended for promotion and were duly promoted thereafter. At that stage, the applicant filed the present application as a writ petition. One of the contentions in the application was that the adverse remarks in the Confidential Report ('CR') for the year 1979-80 in respect of the applicant ^{of were} was communicated to him a day after the original meeting of the EB held on 21.5.1981 and these remarks should, therefore, not have been taken into consideration in that meeting. The High Court initially granted ad-interim stay of promotion of the three juniors of the applicant, but later vacated the same when the respondents gave an assurance that the applicant's representation against the adverse remarks would be considered and a decision taken thereon within a period of three months, and that thereafter a meeting of the EB would be held to review the case of the applicant for promotion as in 1981 in the light of the final decision on his representation. Subsequently, the respondents considered the applicant's representation and rejected it. Thereafter, a meeting of the EB was held on 12.3.1982 to

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consider the applicant's case afresh for promotion as Spl. IGP as in May 1981. At this meeting also, the applicant was not found fit for promotion. This, as we have already stated, happened after the present application was filed as a writ petition. The applicant now challenges his supersession both at the original meeting of the EB held on 21.5.1981 and at its subsequent meeting held on 12.3.1982.

2. The applicant contended that the decision of the EB at its original meeting to pass him over for promotion in May 1981 was unfair, because it was held with undue haste before the adverse remarks for the year 1979-80 were communicated to the applicant. The adverse remarks for 1979-80 should have been communicated to the applicant atleast by May or June 1980, so that he would have had an opportunity to make a representation. On the other hand, by holding back the adverse remarks till the EB meeting was held, the respondent No.1 had acted surreptitiously and not in good faith. Thereafter, when the High Court directed that the applicant's representation against the adverse remarks be considered and a decision taken thereon and in the light of that decision, his promotion be reviewed, the respondents went through the motions of

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considering the representation and holding a fresh meeting of the EB merely as an eye-wash. The representation against the adverse remarks was rejected by a one line letter, which gave no reasons. The EB which met to review his promotion also did not act in good faith, because they merely acted as a rubber stamp of the earlier EB. The charge that this decision was not taken in good faith was sought to be sustained by a rhetorical question: if the earlier decision had been changed, would it not amount to an adverse comment on the proceedings of the earlier meeting? The applicant pointed out that in 1983, i.e., two years later, he was promoted as Spl. IGP. If he was found fit for promotion in 1983, it was clear that his being passed over in May 1981 was unjustified. He could not have suddenly transformed himself into an efficient officer if he was not efficient enough for promotion in May 1981. The applicant relied on the decision of the Supreme Court in GURDIAL SINGH FIJJI vs. STATE OF PUNJAB & OTHERS (1979 (2) SCC 368) to show that the one line reply rejecting his representation was not a reply at all, and should not have been the basis for passing him over in the meeting of the EB held to review the earlier decision. He also relied on the decision in D. RAMASWAMI vs. STATE OF TAMILNADU (1982 SCC (L&S) 115) for

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the proposition that adverse remarks made in 1979-80 should not have been taken into account and the EB should have obtained his latest CR for 1980-81 as the meeting was held in May 1981, and that report should have been the basis for taking a decision. He relied on another decision of the Supreme Court in STATE OF GUJARAT vs. S. TRIPATHI & OTHERS (1986(2) SCC 373) for the proposition that to challenge the decision of a Departmental Promotion Committee (the EB in this case), it is not necessary to establish malafides. If he could show lack of diligence and caution, that would do. He also contended that merely because senior officers were sitting in the EB, there could be no presumption that they acted in good faith and would not act arbitrarily, and for this, he relied on the ruling in CENTRAL INLAND TRANSPORT CORPORATION & ANOTHER vs. B.N. GANGULI & OTHERS (1986(3) SCC 156). In any case, the applicant would ^{not} know what ~~happened~~ motivated his superior officers or the members of the EB to decide against him and he could not be expected to give specific instances of malafides. Even in an innocuous looking order, could be only a cloak (1986(3) SCC 277).

3. Shri M.I. Sethna, learned counsel for the respondents, strongly refuted the contention of the applicant.

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He pointed out that even though the original meeting of the EB was held before communicating the adverse CR for 1979-80, the respondents had thereafter, in obedience to the orders of the High Court, considered the representation of the applicant against those adverse remarks and had rejected the representation. The meeting of the EB that was held subsequently considered his case for promotion afresh as in May 1981, but came to the same conclusion, namely that he was not fit for promotion as on that date. If he was promoted in 1983, that was because he had earned good remarks by that time. He denied that there was lack of good faith. If there could be no presumption that the respondents necessarily acted in good faith, there cannot be a presumption in the opposite direction as well. Vague assertions that what appeared as a routine and proper consideration may only be a camouflage for an act of prejudice and bad faith, should not be acted upon by this Tribunal.

4. Having considered the rival contentions, we are unable to sustain the claim of the applicant that he should have been promoted with effect from May 1981. We have perused the records of the meeting of the EB held in May, 1981 produced by the respondents and we find that all the

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persons who came within the zone of promotion were graded by the EB and as a result of this grading, the three persons junior to the applicant were found to be more suitable for promotion. The applicant was passed over only because of this. Since the adverse remarks which were not communicated in the first instance ^{were of} was subsequently confirmed ~~in the~~ after considering the representation of the applicant, the applicant's grading could not improve when the review EB was held in 1982. This being so, we are satisfied that the consideration of the applicant's case by the EB which met on 12.3.1982 was properly made. There is no indication that there was any lack of good faith, and we cannot go by mere presumptions in this regard. The contention of the applicant that the decision of the original EB taken on the basis of an uncommunicated CR was invalid and should not have been acted upon, cannot now be accepted ~~and~~ because that defect has been cured, the representation against the adverse remarks having been considered and rejected and a fresh meeting of the EB having been held thereafter. We find that the meeting of the EB ^{held in 1983} recorded a note that after the rejection of the applicant for promotion in the review meeting held in 1982, the applicant had earned good reports and had become eligible

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for promotion by 1983. Therefore, we do not agree w
that the promotion of the applicant in 1983 rendered
the decision to pass him over as in May 1981 unjust or
arbitrary. We have carefully gone through the decisions
cited by the applicant and we find that they have no
application to the facts of the present case. We,
therefore, feel that this application deserves to be
dismissed.

5. In the result, the application is dismissed.
Parties to bear their own costs.

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MEMBER (A)

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MEMBER (A)

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Recd. from Shri S. D. Page
S. C. Joshi
(S. C. Joshi)

Son in law of Shri Page