

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 671/96 / ~~199~~

Date of Decision: 18-12-96

K.S.Panicker

Petitioner/s

Shri Sureshkumar

Advocate for the
Petitioner/s

V/s.

U.O.I.

Respondent/s

Shri V.G.Rege

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S.Hegde, Member(J)

Hon'ble Shri M.R.Kolhatkar, Member(A)

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R.Kolhatkar

(M.R.KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 671/96

pronounced, this the 10th day of December 1996

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

K.S.Panicker,
Inspector of Police C.B.I.,
E.O.W. Kitab Mahal, 3rd Floor,
Dr.D.N.Road,
Mumbai - 400 001.

By Advocate Shri Sureshkumar

.. Applicant

-versus-

Union of India
through
Director C.B.I.
C.G.O.Complex, Block No.3,
4th Floor, Lodhi Road,
New Delhi - 110 003.

.. Respondent

By Advocate Shri V.G.Rege

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

The applicant who holds the rank of Sub Inspector in the State of Mizoram joined the Bombay branch of CBI on deputation w.e.f. 31-10-89. He states that after the initial period of deputation of three years was over on or about 31-10-92, his deputation has been successively extended twice; first upto 31-10-94 and then upto 31-10-96 because of his outstanding performance. The applicant states that the respondents had called bio-data of willing officers for promotion as Deputy Superintendent of Police in the CBI on the basis of transfer. The applicant states that his parent department had given No Objection Certificate on 28-12-1994. The applicant appeared before Departmental Promotion Committee on 7-9-95.

The applicant contends that he had topped the list for promotion to the post of Dy.SP. However, before the declaration of the result of the selection, respondents sought to repatriate the applicant to his parent department. The applicant approached Mumbai Bench of the C.A.T. and vide order dt. 18-12-1995 in O.A.1320/95 the order of premature repatriation was quashed and set aside. The applicant contends that after the date of interview i.e. on 7-9-95 till the date of decision by the respondents on the recommendation of the DPC apparently to the effect that promotion would be denied to him on the ground of lack of integrity no charge memo had been served on the applicant. However, a charge memo was issued to the applicant on 25-6-1996. The applicant states that in the affidavit filed by the respondents in O.A. referred to above(O.A.1320/95) the respondents have not stated anything about the integrity of the applicant. The applicant therefore seeks the relief of directing the respondents to promote the applicant to the post of Dy.SP as recommended by DPC with all consequential benefits.

2. Respondents have opposed the admission of the O.A. It is not disputed that on considering the bio-data of the applicant and after interviewing the applicant the name of the applicant was recommended by the UPSC for appointment on deputation basis to the post of Dy.S.P. In this connection a copy of letter of UPSC No.F-3/25(5)/95-AU.IV dt. 20th September,1995 is filed by the respondents from which it is seen that the name of officers including the applicant has been recommended by the UPSC for appointment after the

appointing authority has satisfied himself about their integrity. The respondents contend that the applicant has no right to the appointment to the post of Dy.S.P., it not being a promotional channel for him. It is contended that serious misconduct on the part of the applicant resulting in the loss of classified official documents namely case files, unauthorisedly carried by him on tour, reflected upon his integrity. For this reason the premature repatriation of the applicant was ordered.

3. Respondents then contend that regular departmental proceedings have been started against the applicant on four counts of charge as below :

"(i) Visiting Bangalore while on approved tour to Mangalore without indicating in the Tour Programme of his intention to go to Bangalore and without getting the prior approval for the same from the competent authority;

(ii) The loss of important documents relating to a case of criminal conspiracy involving cheating of Customs Department and thereby causing a substantial loss of revenue by the said act of carelessness and callousness and negligence on the part of the applicant;

(iii) Not reporting the loss of documents exhibiting conduct unbecoming of a Police Officer and

(iv) Remaining unauthorisedly absent

without prior intimation and permission."

Respondents contend that the applicant had challenged the initiation of departmental proceedings against him and had prayed for stay of the proceedings but the Tribunal had not acceded to the request of the applicant and the respondents have been asked to complete the disciplinary proceedings within a period of one month.

4. Respondents contend that in the light of overall situation the applicant is not considered an officer suitable for appointment to a higher post in the CBI and the decision taken is fairly in consonance with the judgment of the Hon'ble Delhi High Court in CW No.108/73 - Vishnu Avtar Gupta vs. U.C.I. Counsel for the respondents contends that Supreme Court has also held in U.P. Bhumi Sudhar Nigam Ltd. vs. Shiv Narayan Gupta vide 1995(1)SLJ 9 that a selected candidate does not have an indefeasible right to appointment.

5. The learned counsel for the respondents also produced before us the C.R. file of the applicant and other material with the respondents relating to the promotion case and D.E. case bearing on the view as to integrity.

6. The chronological sequence appears to be as below :

- (i) Bio-data of the applicant sent to the UPSC for consideration for the post of DY.S.P.
9-3-94
- (ii) Incident relating to loss of file:
June '95
- (iii) Meeting of the DPC: 7-9-95
- (iv) Receipt of the recommendation of the UPSC:
20-9-95
- (v) Order of premature repatriation: 18-10-1995
- (vi) Issue of order of appointment of officers recommended by UPSC but excluding applicant
8-11-1995
- (vii) Quashing of order of repatriation by the Tribunal dt. 18-12-1995
- (viii) Issue of chargesheet to the applicant: 26-6-96

From the above account it is clear that the incident of loss of file for which a regular departmental enquiry has been started after a lapse of one year is at the root of various actions taken by the respondents.

7. So far as the CR file of the applicant is concerned, for 1993-94 under the Integrity column it is stated that nothing adverse has come to the notice of the Reporting Officer. The same remark is repeated for the year 1994-95. For the period 1-4-95 to 24-9-95 under the integrity column the remark is "No Complaints". However, in the CR written for the period 25-9-95 to 31-3-96 the integrity column has been left blank by stating "submitted in enclosed sealed cover". At our request the respondents have

produced the sealed cover before us which we have opened in which the following remarks have been made:

"The integrity of Shri K.S.Panicker, Inspector is found to be doubtful and his name should be kept in the list of officers of doubtful integrity."

8. Learned counsel for the applicant invited our attention to the departmental instructions relating to the procedure for filling up column relating to integrity vide O.M. No.51/5/72-Estt.(A) dt. 20th May,1972. The same are reproduced for ready reference:

"(a) Supervisory officers should maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and action to verify the truth of such suspicions should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the annual confidential report this diary should be consulted and the material in it utilized for filling the column about integrity. If the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following sub-paragraphs.

(b) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts and suspicions regarding the officer's integrity should be recorded simultaneously and followed up.

- (c) A copy of the secret note should be sent together with the character roll to the next superior officer who should ensure that the follow-up action is taken with due expedition.
- (d) If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry made in the character roll. If suspicions regarding his integrity are confirmed, this fact can also be recorded and duly communicated to the officer concerned.
- (e) There are occasions when a reporting officer cannot in fairness to himself and to the officer reported upon, either certify integrity or make an adverse entry, or even be in possession of any information which would enable him to make a secret report to the Head of the Department. Such instances can occur when an officer is serving in a remote station and the reporting officer has not had occasion to watch his work closely or when an officer has worked under the reporting officer only for a brief period or has been on long leave etc. In all such cases, the reporting officer should make an entry in the integrity column to the effect that he has not watched the officer's work for sufficient time to be able to make any definite remark or that he has heard nothing against the officer's integrity, as the case may be. This would be a factual statement to which there can be no objection. But, it is necessary that a superior officer should make every effort to form a definite judgment about the integrity of those working under him, as early as possible, so that he may be able to make a positive statement.

(f) There may be cases in which after a secret report/note has been recorded expressing suspicion about an officer's integrity, the enquiries that follow do not disclose sufficient material to remove the suspicion or to confirm it. In such a case the officer's conduct should be watched for a further period, and in the meantime, he should, as far as practicable, be kept away from positions in which there are opportunities for indulging in corrupt practices. "

19.) From these instructions it is clear that the instructions about in relation to ~~keeping the remarks~~/integrity in sealed cover are quite logical and comprehensive. They envisage independent material in possession of the departmental authorities which is required to be verified. In the instant case, however, the reporting officer has not referred to any such independent material but has made a bland statement about the integrity being doubtful. In the written statement it has been repeatedly stated that the grounds for initiating departmental enquiry ^{are} ~~is~~ also the grounds for doubting the integrity of the officer. It has been pointed out by the counsel for the applicant and it has not been controverted by the counsel for the respondents that there is no charge against the applicant to the effect that his integrity is doubtful which required his answer. In this connection counsel for the applicant invites our attention to the case of R.K. Singh vs. U.O.I. & Ors., (1990) 14 ATC 286 in para 15 of which ~~shows that, that case involved~~ question of integrity xxxxxxxxxxxx and ~~the~~ Tribunal

observed that the articles of charges had specifically mentioned that the allegations cast doubt upon the applicant's integrity. In the instant case, as we observed above, articles of charge do not state anything regarding integrity.

10. Our discussion above based on perusal of records leads us to the conclusion that the respondents have no independent material in their possession to doubt the integrity of the applicant except the material which led to the framing of charges against the applicant in the departmental enquiry which is yet to be concluded. The question, therefore, is whether the respondents were right to deny the integrity certificate to the applicant when he was recommended for the post of Dy.S.P. by the UPSC vide their letter dt. 20-9-95. We have already observed about that upto the period 24-9-95 nothing adverse has come to the notice of the superior authorities to doubt the integrity of the applicant. On the date, when the name of the applicant was recommended by the UPSC the respondents could not have denied the integrity certificate to the applicant.

11. In this connection counsel for the applicant also relies on the judgment of this Tribunal, S.S.Shardul vs. U.O.I. & 2 Ors., 1995(1)ATJ 449. In that case the Tribunal observed in para-8 as below :

"Here in this case we are faced with a situation where column relating to the integrity certificate was left blank and the follow up action did not lead to recording of any adverse remarks or to any departmental proceedings. In such a situation considering the Ministry of

Home Affairs instructions referred to by us above, as in the Limbachia's case it has to be held that the integrity of the applicant was not doubtful and that this certification following the ratio of M.P.Singh's case has to relate back to the original date when the applicant was first considered for promotion viz. in 1985. If we do not do so, not only will there be a violation of the Ministry of Home Affairs instructions dt. 21-6-1965, but the ^{field} will be wide open for the respondents to leave the integrity column blank on mere suspicion even in the case of Officers of impeccable integrity and to deny them promotion for a prolonged period."

Counsel for the applicant submits that his case is similar to that of the applicant in S.S.Shardul's case: the integrity certificate was wrongly denied to him and on the same analogy the applicant is entitled to be promoted as Dy.S.P. on the basis of the recommendation of the UPSC.

12. The counsel for the respondents, however, contends that the case of S.S.Shardul and the case of applicant are on a different footing. In the case of S.S.Shardul it was promotion on the same channel. In the present case, it is promotion on transfer, the parent cadre of the applicant is Mizoram Police, that the applicant is on deputation with the respondents and that the respondents do not consider the applicant to be suitable for retention in the organisation and then the promotion is in terms of recommendation of UPSC, that the recommendations are not binding on the respondents if they come in possession of some material damaging to the applicant and this is what has happened in the present case.

13. Counsel for the respondents, in this connection relies on the judgment of the Supreme Court in the case of Dr.H.Mukherjee vs. U.O.I. & Ors.,1994 Supp(1)SCC 250 and also State of Madhya Pradesh & another vs. Syeed Naseem Zahir and Ors, 1993 Supp(2) SCC 225. In the former the Supreme Court has held that events subsequent to the Commission's recommendation can rightly be taken into consideration for making such decision of denying appointment to an applicant. Similar is the ratio in the case of Syeed Naseem Zahir and others.

14. We,however, note the following significant observation in the case of Dr.H.Mukherjee referred to above:

"There is nothing in that article (323) or in the rules to suggest that the Government cannot take into consideration the developments subsequent to the selection made by the UPSC. Such a view would not be in public interest and may lead to serious complications if the Govt.is enjoined to make the appointment intwithstanding certain serious matters having come to its notice subsequent to the recommendation made by the Commission. Counsel for Respondent, however, submitted that a line of demarcation must be drawn somewhere because the Government cannot be allowed to delay its decision till adverse dircumstances appear against the candidates recommended for appointment. He submitted that this demarcation must coincide with the date on which the recommendation is made by the Commission and at any rate must be confined to a reasonable period subsequent thereto. We are afraid no hard and fast line can be drawn in this connection. Besides, in the instant case we do not find as a fact that the Government had deliberately delayed its decision. In fact immediately after the recommendation was made by the Commission on June 18,1987, theCBI inquiry commenced in September 1987 and ended in December,1987.The ACC could not take a decision during the pendency of the inquiry. Immediately after the inquiry concluded and Respondent 1 was exonerated, the ACC proceeded to process the proposal and found an adverse remark in the ACR for the year 1987.This adverse remark

was immediately communicated to Respondent 1 and after his representation was disposed of in October, 1988 and his appeal against the decision also failed, the ACC took the final decision on December 7, 1988. In the circumstances it cannot be said that the ACC had deliberately delayed the decision. Assuming the decision taken by the ACC is justiciable, there can be no doubt that it can be challenged only on the ground that it smacks of mala fides or arbitrariness. The facts do not reveal that the decision taken by the ACC was either mala fide or arbitrary."

15:

From the chronology of the events we have already observed that the incident relating to loss of files is apparently at the back of the mind of the respondents to deny the promotion to the applicant. To confirm the position in this regard we directed the respondents to produce the files underlying the order dt. 8-11-1995 to show non promotion of the applicant plus the files relating to decision of initiating disciplinary enquiry against the applicant which has a bearing on integrity certificate whose denial resulted in non promotion of the applicant. The file underlying the order dt. 8-11-1995 showed that the suitability of the applicant was certified by the Bombay Branch of CBI but the same was not certified by the special unit, on the basis of whose report an administrative decision appears to have been taken to repatriate the applicant

prematurely to his parent state viz. Mizoram. Thus a view was taken that his continuance in CBI was not desirable in view of adverse report leading to repatriation. At that time the repatriation was given as the reason for non promotion . We have already observed that in O.A. 1320/95 the Tribunal by its order dt. 18-12-1995 quashed and set aside the order of premature repatriation. The order was quashed because parent cadre was not consulted and nothing was said in the pleadings regarding the record of the applicant. It would appear that in the meanwhile a decision was taken to initiate departmental enquiry against the applicant in connection with loss of records. Applying the ratio of H.Mukherjee's case we have to consider whether the decision not to promote the applicant was deliberately delayed and can be faulted as being mala-fide and arbitrary. Here one crucial aspect which goes against the applicant is that the loss of file took place in June '95, the meeting of the DPC took place on 7-9-95 and the recommendation of the UPSC was received on 20-9-95 and it was because of the incident of loss of file which cast a shadow on the conduct of the applicant that an administrative decision not to promote the applicant and to repatriate him was taken. It cannot, therefore, be stated that denial of promotion to the applicant was malafide and arbitrary. The denial of promotion to the applicant was not specifically in the context of the CR of the applicant not reflecting the integrity certificate but in the context of certain

developments which raised the reasonable doubt about the suitability of the applicant to be continued in the CBI.

16. So far as the entry relating to doubtful integrity of the applicant in the C.R. for the latter part of the year 1995-96 is concerned, the same, however, cannot be sustained. If the incident of loss of files reflects on the integrity of the applicant the result of the departmental enquiry would squarely cover the same. We are, therefore, of the view that the remarks relating to integrity without any support of the independent material cannot be allowed to stand and are required to be quashed and are hereby quashed. So far as the main relief, however, is concerned we are unable to grant the same in view of the above discussion.

17. The O.A. is therefore dismissed except to the extent of limited relief with no order as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

B.S. Hegde
(B.S. HEGDE)
Member(J)

M